

Docket 13-14095-DD

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

SHAWN MARSHALL,

Appellant.

**APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF FLORIDA (ORLANDO)**

APPELLANT'S APPENDIX

MARK DIAMOND
Attorney for Appellant
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APPEAL, CLOSED, SL DOC

**U.S. District Court
Middle District of Florida (Orlando)
CRIMINAL DOCKET FOR CASE #: 6:13-cr-00053-JA-KRS-1**

Case title: USA v. Marshall
Magistrate judge case number: 6:13-mj-01108-GJK

Date Filed: 03/12/2013
Date Terminated: 08/21/2013

Assigned to: Judge John Antoon II
Referred to: Magistrate Judge Karla
R. Spaulding

Appeals court case number:
13-14095 USCA

Defendant (1)

Shawn Alan Marshall
TERMINATED: 08/21/2013

represented by **Stephen J. Langs**
Federal Public Defender's Office
Suite 300
201 S Orange Ave
Orlando, FL 32801
407/648-6338 Ext 133
Fax: 407/648-6095
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Craig L. Crawford
Federal Public Defender's Office
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407/648-6338
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ATTORNEY TO BE NOTICED
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Maria Guzman
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TERMINATED: 03/08/2013
*Designation: Public Defender or Community
Defender Appointment*

Pending Counts

18:2242A.F FORCED SEX
THREATS/FEAR OF HARM
(2)

Disposition

Imprisonment: Life; Supervised release: 10 years.
Mandatory drug testing requirements are imposed.
Special conditions of supervised release: Participate
in programs for treatment of drug/alcohol

dependency and mental health treatment specializing in sexual offender treatment and submit to polygraph testing and contribute to the costs of these programs; Register with the state sexual offender registration agency in any state you reside, visit, are employed, etc.; Register as a sexual offender under (SORNA); Deft. shall have no direct contact with minors and shall refrain from entering into any area where children frequently congregate; Deft. shall not possess, subscribe to or view any video, magazines, or literature depicting children in the nude and/or in sexually explicit positions; Deft. shall not possess or use a computer with access to any online service at any location; Deft. shall submit to a search of his person, residence, place of business, etc.; Cooperate in the collection of DNA; Deft. shall be prohibited from incurring new credit charges, opening additional lines of credit and provide probation officer access to any requested financial information. Fine: Waived; Special assessment: \$100.00 Restitution: Deferred and a hearing will be set within 90 days by separate notice. Deft. is remanded to the custody of the U.S. Marshal

Highest Offense Level (Opening)

Felony

Terminated Counts

18:2423.F COERCION OR
ENTICEMENT OF MINOR
FEMALE
(1)

Disposition

Dismissed

**Highest Offense Level
(Terminated)**

Felony

Complaints

18:2242A.F FORCED SEX
THREATS/FEAR OF HARM

Disposition

Plaintiff

USA

represented by **Andrew C. Searle**
US Attorney's Office – FLM
Suite 3100
400 W Washington St
Orlando, FL 32801
407/648-7500
Email: andrew.searle@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/04/2013	<u>1</u>	COMPLAINT as to Shawn Alan Marshall (1). (KKA) [6:13-mj-01108-GJK] (Entered: 03/04/2013)

03/04/2013	<u>3</u>	NOTICE of possible conflict of interest by USA as to Shawn Alan Marshall No conflict of interest. (Searle, Andrew) [6:13-mj-01108-GJK] (Entered: 03/04/2013)
03/06/2013		Arrest of Shawn Alan Marshall on 3/6/13. (KKA) [6:13-mj-01108-GJK] (Entered: 03/06/2013)
03/06/2013	<u>4</u>	Minute Entry for proceedings held before Magistrate Judge Gregory J. Kelly: Initial Appearance as to Shawn Alan Marshall held on 3/6/2013. (digital) (KKA) [6:13-mj-01108-GJK] (Entered: 03/06/2013)
03/06/2013	<u>5</u>	***CJA 23 Financial Affidavit by Shawn Alan Marshall. (KKA) [6:13-mj-01108-GJK] (Entered: 03/06/2013)
03/06/2013	<u>6</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to Shawn Alan Marshall. Maria Guzman for Shawn Alan Marshall appointed. Signed by Magistrate Judge Gregory J. Kelly on 3/6/2013. (KKA) [6:13-mj-01108-GJK] (Entered: 03/06/2013)
03/06/2013	<u>7</u>	ORDER OF TEMPORARY DETENTION as to Shawn Alan Marshall. Detention and Preliminary Hearing set for 3/13/2013 at 10:00 AM in Orlando Courtroom 3 C before Magistrate Judge Gregory J. Kelly. Signed by Magistrate Judge Gregory J. Kelly on 3/6/2013. ctp(KKA) [6:13-mj-01108-GJK] (Entered: 03/06/2013)
03/06/2013	<u>8</u>	Arrest Warrant Returned Executed on 3/5/13. as to Shawn Alan Marshall. (KKA) [6:13-mj-01108-GJK] (Entered: 03/06/2013)
03/08/2013	<u>9</u>	NOTICE OF ATTORNEY APPEARANCE: Stephen J. Langs appearing for Shawn Alan Marshall <i>and Substitution of Counsel</i> (Langs, Stephen) [6:13-mj-01108-GJK] (Entered: 03/08/2013)
03/12/2013	<u>10</u>	INDICTMENT returned in open court as to Shawn Alan Marshall (1) count(s) 1, 2. (SAH) (Entered: 03/13/2013)
03/13/2013	<u>11</u>	Minute Entry for proceedings held before Magistrate Judge Gregory J. Kelly: ARRAIGNMENT as to Shawn Alan Marshall (1) Count 1, 2 held on 3/13/2013 Defendant(s) pled not guilty, MISCELLANEOUS hearing held on 3/13/2013 as to Shawn Alan Marshall. (digital) (KKA) (Entered: 03/13/2013)
03/13/2013	<u>12</u>	SCHEDULING ORDER as to Shawn Alan Marshall. Status Conference set for 4/19/2013 at 09:15 AM in Orlando Courtroom 6 B before Judge John Antoon II, Jury Trial set for 5/6/2013 at 09:00 AM before Judge John Antoon II. Signed by Magistrate Judge Gregory J. Kelly on 3/13/2013. ctp(KKA) (Entered: 03/13/2013)
03/13/2013	<u>13</u>	WAIVER of Preliminary Hearing by Shawn Alan Marshall. ctp (KKA) (Entered: 03/13/2013)
03/13/2013	<u>14</u>	ORDER OF DETENTION without prejudice as to Shawn Alan Marshall. Signed by Magistrate Judge Gregory J. Kelly on 3/13/2013. ctp (KKA) (Entered: 03/13/2013)
03/14/2013	<u>15</u>	NOTICE of pendency of related cases re 6:13-mj-1108 order of compliance to Local Rule as to Shawn Alan Marshall by USA. Related case(s): Yes (Searle, Andrew) (Entered: 03/14/2013)
03/14/2013	<u>16</u>	NOTICE OF ATTORNEY APPEARANCE Andrew C. Searle appearing for USA. (Searle, Andrew) (Entered: 03/14/2013)
03/14/2013	<u>17</u>	NOTICE of estimated length of trial by USA Estimated trial length: four days. (Searle, Andrew) (Entered: 03/14/2013)
03/14/2013	<u>18</u>	NOTICE of possible conflict of interest <i>Tracy P. Preece, Esq.</i> by USA as to Shawn Alan Marshall A possible conflict of interest does exist. (Searle, Andrew) (Entered: 03/14/2013)
03/14/2013	<u>19</u>	CERTIFICATE of interested persons and corporate disclosure statement by USA (Searle, Andrew) (Entered: 03/14/2013)
04/11/2013	<u>20</u>	NOTICE OF RESCHEDULING HEARING: The Criminal Status Conference hearing previously scheduled for April 19, 2013 is rescheduled as to Shawn Alan

		Marshall. New hearing date and time: Status Conference set for 4/18/2013 at 10:00 AM in Orlando Courtroom 6 B before Judge John Antoon II. CTP (DJD) (Entered: 04/11/2013)
04/18/2013	<u>21</u>	Minute Entry for proceedings held before Judge John Antoon II: CRIMINAL STATUS Conference as to Shawn Alan Marshall held on 4/18/2013. Court Grants Defendant's Motion to Continue Trial to the July 2013 trial term upon the filing of a written motion to continue and waiver of speedy trial. Counsel for Pltf: Shawn Napier; Counsel for Deft: Stephen J. Langs. Start time: 10:14 a.m; End time: 10:17 a.m. Court Reporter: Amie First (DJD) (Entered: 04/18/2013)
04/22/2013	<u>22</u>	Unopposed MOTION to continue trial by Shawn Alan Marshall. (Langs, Stephen) (Entered: 04/22/2013)
04/22/2013	<u>23</u>	WAIVER of speedy trial through Monday September 2, 2013 by Shawn Alan Marshall (Langs, Stephen) (Entered: 04/22/2013)
04/25/2013	<u>24</u>	PLEA AGREEMENT re: count(s) Two of the Indictment as to Shawn Alan Marshall (Searle, Andrew) (Entered: 04/25/2013)
05/02/2013	<u>25</u>	NOTICE OF HEARING as to Shawn Alan Marshall. Change of Plea Hearing set for 5/8/2013 at 11:00 AM in Orlando Courtroom 5 D before Magistrate Judge Karla R. Spaulding. (copies provided)(ECJ) (Entered: 05/02/2013)
05/03/2013	<u>26</u>	ORDER Granting <u>22</u> Motion to continue trial as to Shawn Alan Marshall. Jury Trial set for the trial term commencing 6/3/2013 in Orlando Courtroom 6B before Judge John Antoon II. Status Conference set for 5/22/2013 at 08:45 AM in Orlando Courtroom 6 B before Judge John Antoon II. Signed by Judge John Antoon II on 5/3/2013. CTP (DJD) (Entered: 05/03/2013)
05/08/2013	<u>27</u>	PLEA AGREEMENT – AMENDED re: count(s) Two of the Indictment as to Shawn Alan Marshall (Searle, Andrew) (Entered: 05/08/2013)
05/08/2013	<u>28</u>	Minute Entry for proceedings held before Magistrate Judge Karla R. Spaulding: Change of Plea Hearing as to Shawn Alan Marshall held on 5/8/2013. (DIGITAL) (ECJ) (Entered: 05/08/2013)
05/08/2013	<u>29</u>	NOTICE regarding plea of guilty by Shawn Alan Marshall. (ECJ) (Entered: 05/08/2013)
05/08/2013	<u>30</u>	CONSENT TO INSPECTION of Presentence Investigation Report by Shawn Alan Marshall. (ECJ) (Entered: 05/08/2013)
05/08/2013	<u>31</u>	REPORT AND RECOMMENDATIONS concerning Plea of Guilty re: Count Two of the Indictment as to Shawn Alan Marshall. Signed by Magistrate Judge Karla R. Spaulding on 5/8/2013. (copies provided)(ECJ) (Entered: 05/08/2013)
05/08/2013	<u>32</u>	NOTICE of no objection re <u>31</u> Report and Recommendations concerning plea of guilty by USA as to Shawn Alan Marshall. (ECJ) (Entered: 05/08/2013)
05/22/2013	<u>33</u>	ACCEPTANCE OF PLEA of guilty and adjudication of guilt re: Count Two of the Indictment as to Shawn Alan Marshall. Signed by Judge John Antoon II on 5/22/2013. CTP (DJD) (Entered: 05/22/2013)
05/22/2013	<u>34</u>	NOTICE OF HEARING as to Shawn Alan Marshall Sentencing set for 8/2/2013 at 10:30AM in Orlando Courtroom 6 B before Judge John Antoon II. All Objections to the Pre-Sentence Report or Motions pertaining thereto shall be in writing and filed no later than three (3) days prior to the sentencing hearing. Counsel is to notify the Courtroom Deputy Clerk as soon as possible if they believe the sentencing will be longer than 30 minutes. CTP (DJD) (Entered: 05/22/2013)
06/17/2013	<u>35</u>	NOTICE OF RESCHEDULING HEARING: The Sentencing hearing previously scheduled for August 2, 2013 is rescheduled as to Shawn Alan Marshall. New hearing date and time: Sentencing set for 8/21/2013 at 09:30AM in Orlando Courtroom 6 B before Judge John Antoon II. CTP (DJD) (Entered: 06/17/2013)
08/15/2013	<u>36</u>	MOTION to Seal (<i>Mr Marshall's Motion to File Report Under Seal</i>) by Shawn Alan Marshall. (Langs, Stephen) Modified on 8/15/2013 (LAK). (Entered: 08/15/2013)

08/16/2013	<u>37</u>	ORDER granting <u>36</u> Motion to Seal as to Shawn Alan Marshall (1). Signed by Magistrate Judge Karla R. Spaulding on 8/16/2013. (LAK) (Entered: 08/19/2013)
08/16/2013		S-38 Sealed Document (MAL) (Entered: 08/19/2013)
08/21/2013	<u>39</u>	MOTION for Reconsideration by Shawn Alan Marshall. (Langs, Stephen) (Entered: 08/21/2013)
08/21/2013	<u>40</u>	RESPONSE in Opposition by USA as to Shawn Alan Marshall re <u>39</u> MOTION for Reconsideration (Searle, Andrew) (Entered: 08/21/2013)
08/21/2013	<u>41</u>	Minute Entry for proceedings held before Judge John Antoon II: SENTENCING held on 8/21/2013 for Shawn Alan Marshall – Count 1 is Dismissed; Count 2 – Imprisonment: Life; Supervised release: 10 years. Mandatory drug testing requirements are imposed. Special conditions of supervised release: Participate in programs for treatment of drug/alcohol dependency and mental health treatment specializing in sexual offender treatment and submit to polygraph testing and contribute to the costs of these programs; Register with the state sexual offender registration agency in any state you reside, visit, are employed, etc.; Register as a sexual offender under (SORNA); Deft. shall have no direct contact with minors and shall refrain from entering into any area where children frequently congregate; Deft. shall not possess, subscribe to or view any video, magazines, or literature depicting children in the nude and/or in sexually explicit positions; Deft. shall not possess or use a computer with access to any online service at any location; Deft. shall submit to a search of his person, residence, place of business, etc.; Cooperate in the collection of DNA; Deft. shall be prohibited from incurring new credit charges, opening additional lines of credit and provide probation officer access to any requested financial information. Fine: Waived; Special assessment: \$100.00 Restitution: Deferred and a hearing will be set within 90 days by separate notice. Deft. is remanded to the custody of the U.S. Marshal. Court Reporter: Amie First (DJD) (Entered: 08/22/2013)
08/22/2013	<u>42</u>	NOTICE OF HEARING as to Shawn Alan Marshall Restitution Hearing set for 11/21/2013 at 09:30 AM in Orlando Courtroom 6 B before Judge John Antoon II. CTP (DJD) (Entered: 08/22/2013)
08/27/2013	<u>43</u>	MEMORANDUM AND OPINION on sentencing hearing and ORDER denying <u>39</u> Motion for Reconsideration as to Shawn Alan Marshall (1) signed by Judge John Antoon II on 8/23/2013. (Certified copies to USM, US Probation, US Pretrial, AUSA and Public Defender) (AKJ) (Entered: 08/27/2013)
08/27/2013	<u>44</u>	JUDGMENT as to Shawn Alan Marshall (1), Count 1 is dismissed; Count 2 – Imprisonment: Life; Supervised release: 10 years. Mandatory drug testing requirements are imposed. Special conditions of supervised release: Participate in programs for treatment of drug/alcohol dependency and mental health treatment specializing in sexual offender treatment and submit to polygraph testing and contribute to the costs of these programs; Register with the state sexual offender registration agency in any state you reside, visit, are employed, etc.; Register as a sexual offender under (SORNA); Deft. shall have no direct contact with minors and shall refrain from entering into any area where children frequently congregate; Deft. shall not possess, subscribe to or view any video, magazines, or literature depicting children in the nude and/or in sexually explicit positions; Deft. shall not possess or use a computer with access to any online service at any location; Deft. shall submit to a search of his person, residence, place of business, etc.; Cooperate in the collection of DNA; Deft. shall be prohibited from incurring new credit charges, opening additional lines of credit and provide probation officer access to any requested financial information. Fine: Waived; Special assessment: \$100.00 Restitution: Deferred and a hearing will be set within 90 days by separate notice. Deft. is remanded to the custody of the U.S. Marshal Signed by Judge John Antoon II on 8/27/2013. (certified copies to AUSA, Public Defender, USM)(AKJ) (Entered: 08/27/2013)
08/29/2013	<u>45</u>	NOTICE OF APPEAL by Shawn Alan Marshall re <u>44</u> Judgment Filing fee not paid. (Langs, Stephen) (Entered: 08/29/2013)
08/30/2013	<u>46</u>	TRANSMITTAL of initial appeal package as to Shawn Alan Marshall to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being

		appealed, and motion, if applicable to USCA re <u>45</u> Notice of Appeal. Eleventh Circuit Transcript information form forwarded to pro se litigants and available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (CH) (Entered: 08/30/2013)
09/16/2013		USCA Case Number as to Shawn Alan Marshall. USCA Number: 13-14095 for <u>45</u> Notice of Appeal filed by Shawn Alan Marshall. (LAK) (Entered: 09/16/2013)
09/23/2013	<u>47</u>	NOTICE OF ATTORNEY APPEARANCE: Craig L. Crawford appearing for Shawn Alan Marshall <i>for purposes of appeal</i> (Crawford, Craig) (Entered: 09/23/2013)
09/23/2013	<u>48</u>	TRANSCRIPT information form filed by Shawn Alan Marshall for proceedings held on 5/8/13, 8/21/13, 8/22/13 before Judge Antoon re <u>45</u> Notice of Appeal. USCA number: 13-14095-D (Crawford, Craig) (Entered: 09/23/2013)
10/01/2013	<u>49</u>	Judgment Returned Executed as to Shawn Alan Marshall on 9/20/2013. Institution: USP Tucson, Tucson, Arizona. (MAL) Modified on 10/2/2013 (LMM). (Entered: 10/01/2013)
10/07/2013	<u>50</u>	COURT REPORTER ACKNOWLEDGEMENT by Amie R. First, RPR, CRR re <u>45</u> Notice of Appeal as to Shawn Alan Marshall Estimated transcript filing date: 10-24-13. (ARF) (Entered: 10/07/2013)
10/31/2013	<u>51</u>	TRANSCRIPT of Change of Plea for dates of 5-8-13 held before Judge Karla J. Spaulding, re: <u>45</u> Notice of Appeal as to Shawn Alan Marshall. Court Reporter/Transcriber Amie R. First, RPR, CRR, AmieFirst.CourtReporter@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 11/21/2013, Redacted Transcript Deadline set for 12/2/2013, Release of Transcript Restriction set for 1/29/2014. (ARF) (Entered: 10/31/2013)
10/31/2013	<u>52</u>	TRANSCRIPT of Sentencing for dates of 8-21-13 held before Judge John Antoon, II, re: <u>45</u> Notice of Appeal as to Shawn Alan Marshall. Court Reporter Amie R. First, RPR, CRR, AmieFirst.CourtReporter@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 11/21/2013, Redacted Transcript Deadline set for 12/2/2013, Release of Transcript Restriction set for 1/29/2014. (ARF) REDACTED TRANSCRIPT FILED AT #53 (Entered: 10/31/2013)
10/31/2013	<u>53</u>	Redaction re <u>52</u> Transcript – Appeal in case as to Shawn Alan Marshall (ARF) (Entered: 10/31/2013)
10/31/2013	<u>54</u>	TRANSCRIPT of Continued Sentencing for dates of 8-22-13 held before Judge John Antoon, II, re: <u>45</u> Notice of Appeal as to Shawn Alan Marshall. Court Reporter Amie R. First, RPR, CRR, AmieFirst.CourtReporter@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 11/21/2013, Redacted Transcript Deadline set for 12/2/2013, Release of Transcript Restriction set for 1/29/2014. (ARF) (Entered: 10/31/2013)
10/31/2013	<u>55</u>	NOTIFICATION that transcript has been filed by Amie R. First, RPR, CRR re: <u>45</u> Notice of Appeal as to Shawn Alan Marshall USCA number: 13-14095 (ARF) (Entered: 10/31/2013)
10/31/2013	<u>56</u>	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office

		public terminal as to Shawn Alan Marshall. Court Reporter: Amie First (ARF) (Entered: 10/31/2013)
11/01/2013		***ENTERED IN ERROR*** (MAL) Modified on 11/1/2013 (MAL). (Entered: 11/01/2013)
11/20/2013	<u>57</u>	Restitution STIPULATION of the Parties by USA and Shawn Alan Marshal(Attachments: # <u>1</u> Text of Proposed Order)(Searle, Andrew) Modified on 11/21/2013 (MAL). (Entered: 11/20/2013)
11/21/2013	<u>58</u>	RESTITUTION ORDER as to Shawn Alan Marshall. The total amount of restitution ordered to be paid by the defendant to the victim in this case is \$425.00. Signed by Judge John Antoon II on 11/21/2013. CTP (DJD) (Entered: 11/21/2013)
11/21/2013	59	NOTICE canceling Restitution hearing scheduled for November 21, 2013 as to Shawn Alan Marshall. CTP (DJD) (Entered: 11/21/2013)

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

13 MAR 12 PM 4:01

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

SHAWN ALAN MARSHALL

CASE NO. 6:13-cr- 53 or L 28 KRS
18 U.S.C. § 2423(a)
18 U.S.C. 2242(1)
18 U.S.C. § 2428 - Forfeiture

INDICTMENT

The Grand Jury charges:

COUNT ONE

Beginning on or about March 2, 2011 and continuing through on or about March 3, 2011, in Hillsborough County, Florida, in the Middle District of Florida, and elsewhere,

SHAWN ALAN MARSHALL,

the defendant herein, did knowingly transport and cause to be transported a minor female, who had not attained the age of 18 years, in interstate commerce, that is, from Hawaii to Florida, with intent that the minor female engage in any sexual activity for which any person can be charged with a criminal offense.

All in violation of Title 18, United States Code, Section 2423(a).

COUNT TWO

Beginning on or about March 16, 2011 and continuing through on or about November 30, 2012, at Patrick Air Force Base, in Brevard County, in the Middle District of Florida, and within the territorial jurisdiction of the United States,

SHAWN ALAN MARSHALL,

the defendant herein, did knowingly cause a minor female to engage in sexual acts, that is, penetrating the minor female's vagina with his penis and causing his mouth to have contact with the minor female's vagina, by threatening the minor female and placing the minor female in fear.

All in violation of Title 18, United States Code, Sections 2242(1) and 7.

FORFEITURE

1. The allegations contained in Count One of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2428.

2. Pursuant to Title 18, United States Code, Section 2428, upon conviction of an offense in violation of Title 18, United States Code, Section 2423, the defendant, **SHAWN ALAN MARSHALL**, shall forfeit to the United States of America any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the offenses and any property, real or personal, constituting or derived from any proceeds obtained, directly or indirectly, as a result of the offenses.

3. If any of the property described above, as a result of any act or omission of the defendant:

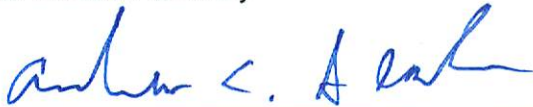
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

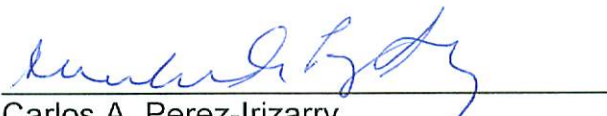
the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL,


Foreperson

ROBERT E. O'NEILL
United States Attorney

By: 
Andrew C. Searle
Assistant United States Attorney

By: 
Carlos A. Perez-Irizarry
Assistant United States Attorney
Chief, Orlando Division

UNITED STATES DISTRICT COURT

Middle District of Florida
Orlando Division

THE UNITED STATES OF AMERICA

VS.

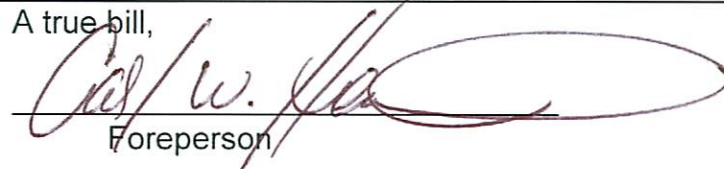
SHAWN ALAN MARSHALL

INDICTMENT

Violations:

18 U.S.C. 2242(1) and 18 U.S.C. 2423(a)

A true bill,


Foreperson

Filed in open court this 12th day
of March, 2013.

Clerk

Bail \$ _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:13-cr-53-Orl-28-KRS

SHAWN ALAN MARSHALL


PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, **SHAWN ALAN MARSHALL**, and the attorney for the defendant, Stephen J. Langs, mutually agree as follows:

A. **Particularized Terms**

1. **Count Pleading To**

The defendant shall enter a plea of guilty to Count Two of the Indictment. Count Two charges the defendant with knowingly causing a minor female to engage in sexual acts, that is, penetrating the minor female's vagina with his penis and causing his mouth to have contact with the minor female's vagina, by threatening the minor female or placing the minor female in fear, within the territorial jurisdiction of the United States, in violation of 18 U.S.C. §§ 2242(1) and (7).

X Defendant's Initials 

AF Approval 

2. Maximum Penalties

Count One carries a maximum sentence of up to life imprisonment, a fine of \$25,000, a term of supervised release of five years up to life, and a special assessment of \$100. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense, and with respect to other offense, the Court may order the defendant to make restitution to any victim of the offense, or to the community, as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which the defendant has been charged and to which the defendant is pleading guilty. The elements of Count Two are:

- First: the defendant caused the minor female to participate in sexual acts;
- Second: the defendant did so by threatening the minor female or placing the minor female in fear;
- Third: the defendant did these acts knowingly; and
- Fourth: the acts occurred within the territorial jurisdiction of the United States.

4. Counts Dismissed

At the time of sentencing, the remaining count against the defendant, Count One, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

Defendant's Initials



5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge the defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. §§ 3663(a) and (c)(1) and 18 U.S.C. § 2248, the defendant agrees to make full restitution to the minor female described in the Indictment.

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

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8. Acceptance of Responsibility - Two Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will not oppose the defendant's request to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

9. Sex Offender Registration and Notification

The defendant has been advised and understands, that under the Sex Offender Registration and Notification Act, a federal law, the defendant must register and keep the registration current in each of the following jurisdictions: the location of the defendant's residence, the location of the defendant's employment; and, if the defendant is a student, the location of the defendant's school. Registration will require that the defendant provide information that includes name, residence address, and the names and addresses of any places at which the defendant is or will be an employee or a student. The defendant understands that he must update his registrations not later than three business days after any change of name, residence, employment, or student status. The defendant understands that failure to comply with these obligations subjects the

Defendant's Initials



defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987), including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013.

Defendant's Initials



The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count to which the defendant pleads, to respond to comments made by the defendant or the defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

4. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit

Defendant's Initials



reflecting the defendant's financial condition. The defendant promises that his/her financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he/she has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

5. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or

Defendant's Initials



defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. The defendant further understands and acknowledges that any discussions between the defendant or the defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, the defendant will not be permitted to withdraw the defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

6. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal the defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by

Defendant's Initials



the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

7. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring the defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

8. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of the defendant's entry of a plea of guilty pursuant hereto.

9. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and the

Defendant's Initials 

defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges the defendant's understanding of the nature of the offense or offenses to which the defendant is pleading guilty and the elements thereof, including the penalties provided by law, and the defendant's complete satisfaction with the representation and advice received from the defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against the defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in the defendant's defense; but, by pleading guilty, the defendant waives or gives up those rights and there will be no trial. The defendant further understands that if the defendant pleads guilty, the Court may ask the defendant questions about the offense or offenses to which the defendant pleaded, and if the defendant answers those questions under oath, on the record, and in the presence of counsel (if any), the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement. The defendant also understands that the defendant will be adjudicated guilty of the offenses to which the defendant has pleaded and, if any of such offenses are felonies, may

Defendant's Initials Sw

thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

10. Factual Basis

The defendant is pleading guilty because the defendant is in fact guilty. The defendant certifies that the defendant does hereby admit that the facts set forth below, are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

FACTS¹

Beginning on or about March 16, 2011, and continuing through and including on or about November 30, 2012, at Patrick Air Force Base, in Brevard County, in the Middle District of Florida, and within the territorial jurisdiction of the United States, the defendant, **SHAWN ALAN MARSHALL ("MARSHALL")**, knowingly caused a minor female to engage in sexual acts, that is penetrating the minor female's vagina with his penis and causing his mouth to have contact with the minor female's vagina, by threatening the minor female or placing the minor female in fear.

¹The factual basis is prepared by the United States and does not include all of the facts relevant to the defendant's involvement in the crime to which the defendant is pleading guilty and other illegal activities in which the defendant may have been involved.

The minor female described above, and in the Indictment, is a relative of **MARSHALL'S**. **MARSHALL** began sexually abusing the minor female in April or May 2008 when **MARSHALL**, the minor female, and other members of their family lived in Hawaii. **MARSHALL** drank excessive amounts of alcohol and was physically and verbally abusive to other family members in the presence of the minor female. On one occasion, the minor female witnessed **MARSHALL** pick up a futon couch, which the minor female's mother was laying on, and turn the couch over, on top of her mother. Due to **MARSHALL'S** excessive drinking and abusive behavior, the minor female feared **MARSHALL** and complied with all of his sexual demands because she feared he would bodily harm her if she did not comply. While the family was still living in Hawaii, **MARSHALL** told the minor female's mother, who is also his wife, that if she (the mother) would not have sex with him, he would rape the minor female.

On or about March 2, 2011, **MARSHALL**, the minor female, and other family members moved from Hawaii to Florida, by commercial flight, arriving at the Tampa airport, in Hillsborough County, on March 3, 2011. The family temporarily lived in hotels in the Middle District of Florida. During this period, **MARSHALL** attempted to create situations where he and the minor female would be alone in the hotel rooms, by asking his wife to run errands and asking other family members to leave the hotel room. **MARSHALL** was unable to get the minor female alone while the family was living in hotels.

Defendant's Initials 

On or about March 16, 2011, the family, including **MARSHALL** and the minor female, moved into a townhouse, located on Patrick Air Force Base, which is within the exclusive territorial jurisdiction of the United States. Once the family moved into the residence on the Air Force Base, **MARSHALL** resumed sexually abusing the minor female. The abuse typically occurred when the minor female's mother was at work and consisted of **MARSHALL** penetrating the minor female's vagina with his penis on multiple occasions in the bathrooms, the master bedroom, and the dining room of the Air Force Base home. When the abuse occurred in the bathroom, **MARSHALL** locked the minor female in the bathroom with him, and was careful to make sure that he and the minor female left the bathroom separately after he was finished. **MARSHALL** also placed his mouth on the minor female's vagina while in the master bedroom of the Air Force Base residence. In November 2012, **MARSHALL** sexually abused the minor female for the last time.

During some of the sexual abuse, **MARSHALL** used physical force on the minor female. In Hawaii and on the Air Force Base, **MARSHALL** pinned the minor victim's arms behind her back while vaginally penetrating her with his penis. On another occasion in Hawaii, **MARSHALL** wrapped an amplifier cord around the minor female's throat, while engaging in a sexual act with her. On yet another occasion, in the Air Force Base home, **MARSHALL** called the minor female into the master bedroom and told her to take off her shirt. When the

Defendant's Initials 

minor female hesitated, lifting her shirt up only half-way, **MARSHALL** pulled the shirt off of the minor female's body and inserted his penis into her vagina.

While the family lived in the Air Force Base home, **MARSHALL** continued to be physically and verbally abusive in the presence of the minor female and the minor female continued to comply with all of **MARSHALL'S** sexual demands because she feared him. On one occasion, during an argument inside the Air Force Base home, the minor female witnessed **MARSHALL** punch a hole in her bedroom door. **MARSHALL** also used coercion to prevent the victim from disclosing the abuse, telling her that if anyone found out it would destroy the family.

On or about February 7, 2013, the minor female told her mother that **MARSHALL** had been sexually abusing her for years. The mother contacted **MARSHALL**, via cellular telephone, and told him she knew what was going on. **MARSHALL** immediately responded by stating: "Oh my God. I am so sorry. (I knew you would find out.)"

11. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

Defendant's Initials 

12. Certification

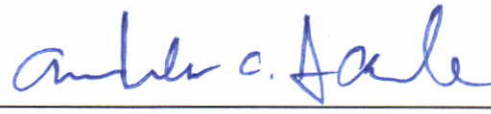
The defendant and the defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that the defendant fully understands its terms.

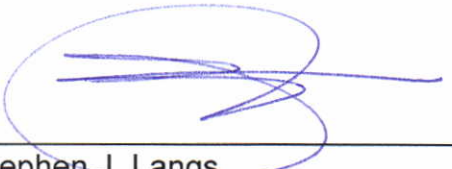
DATED this 23RD APRIL day of ~~March~~, 2013.

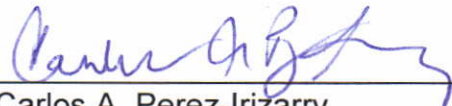
ROBERT E. O'NEILL
United States Attorney



SHAWN ALAN MARSHALL
Defendant

By:


Andrew C. Searle
Assistant United States Attorney


Stephen J. Langs
Attorney for Defendant


Carlos A. Perez-Irizarry
Assistant United States Attorney
Chief, Orlando Division

Endnote 1 — DEFENDANT ACTUALLY SAID,
"I KNOW I'VE DESTROYED US."
(NOT I KNOW YOU WOULD FIND OUT) 

Defendant's Initials Sam

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

-vs-

Case No. 6:13-cr-53-Orl-28KRS

SHAWN ALAN MARSHALL

**REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY**

The Defendant, by consent, has appeared before me pursuant to Rule 11, F.R.Cr.P. and Rule 6.01(c)(12), Middle District of Florida Local Rules, and has entered a plea of guilty to Count Two of the Indictment. After cautioning and examining the Defendant under oath concerning each of the subjects mentioned in Rule 11, I determined that the guilty plea was knowledgeable and voluntary and that the offenses charged are supported by an independent basis in fact containing each of the essential elements of such offense. I therefore recommend that the plea agreement and the plea of guilty be accepted and that the Defendant be adjudged guilty and have sentence imposed accordingly. The Defendant is in custody of the U.S. Marshal pending sentencing.

Date: May 8, 2013


KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. Section 636(b)(1)(B), Rule 6.02 Middle District of Florida Local Rules.

Copies furnished to:

United States Marshal
United States Attorney
United States Probation Office
Counsel of Record:
District Judge

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

-vs-

Case No: 6:13-cr-53-Orl-28KRS

SHAWN ALAN MARSHALL

ORDER

This Order is entered to explain the sentence imposed in this case, which exceeds the United States Sentencing Guidelines recommended range.

Defendant Shawn Alan Marshall appeared before me for sentencing after entering a plea of guilty to the offense of Knowingly Causing a Minor Female to Engage in Sexual Acts, that is, penetrating the minor female's vagina with his penis and causing his mouth to have contact with the minor female's vagina, by threatening the minor female or placing the minor female in fear, within the territorial jurisdiction of the United States, in violation of 18 U.S.C. §§ 2242(1) and 7.

Prior to the sentencing hearing, I reviewed the Presentence Report ("PSR") prepared by United States Probation Officer Angela D. Harris-Butler and the neuropsychological evaluation of Defendant. At the sentencing hearing, I heard the oral statement of the Defendant and argument from counsel as to what would constitute a reasonable sentence satisfying the requirements of 18 U.S.C. § 3553(a). The PSR, the neuropsychological evaluation, Defendant's statement, and the arguments of counsel were considered by me in determining a sentence.

Calculation of Guidelines Score

In crafting a reasonable sentence, the trial court must first correctly calculate the range of sentences called for by the United States Sentencing Guidelines ("USSG"). A calculation was initially done by Probation Officer Harris-Butler, and it is included in the PSR. Defendant objected to the Probation Officer's calculation, arguing that the enhancement for Repeat and Dangerous Sex Offender Against Minors under USSG § 4B1.5(b)(1) should not apply. At the hearing, I overruled this objection. I adopt the Probation Officer's calculation as part of my findings of fact.

The Base Offense Level pursuant to USSG § 2A3.1 is 30. As Specific Offense Characteristics, a total of 4 levels are added—2 levels pursuant to USSG § 2A3.1(b)(2)(B) because the offense involved a minor who had attained the age of twelve years but had not attained the age of sixteen years and 2 levels pursuant to USSG § 2A3.1(b)(3)(A) because the victim was in the custody, care, or supervisory control of Defendant. Additionally, 2 levels are added pursuant to USSG § 3A1.3 because the victim was physically restrained in the course of the offense. The Adjusted Subtotal Offense Level is therefore 36. A Chapter Four Enhancement pursuant to USSG § 4B1.5(b)(1) adds 5 levels to the Adjusted Subtotal Offense Level for a subtotal of 41.

Because Defendant accepted responsibility, the Adjusted Subtotal Offense Level is reduced 3 levels pursuant to USSG §§ 3E1.1(a) and (b). The resulting Total Offense Level is 38. Defendant has no prior convictions, so there are no Criminal History Points to consider and Defendant's Criminal History Category is I.

Accordingly, the Guidelines Sentencing range is 235 to 293 months imprisonment

followed by 5 years to life of supervised release. Notably, the charge to which Defendant pled guilty as stated above carries a sentence of any term of years or life, which defense counsel acknowledged in Defendant's Motion to File Report Under Seal (Doc. 36) and again at the sentencing hearing. Pursuant to 18 U.S.C. § 3663A, restitution shall be ordered in this case, to be determined at a later time. The fine range is \$25,000 to \$250,000 and Defendant is required to pay a special assessment of \$100.

Statutory Sentencing Factors

A sentencing court is to impose a sentence that is sufficient but not greater than necessary to meet the statutory purposes of sentencing. In meeting that mandate a court must consider the advisory guidelines as well as the factors set forth in 18 U.S.C. § 3553(a)(1)-(7).

18 U.S.C. § 3553(a)(1)—Nature and Circumstances of the Offense

The facts relevant to sentencing are contained in the Presentence Report. The parties have not objected to those facts, and I have adopted them as my findings of fact. As detailed in paragraphs 8-17 of the Presentence Report, Defendant repeatedly raped his daughter beginning when she was 14 years old until the conduct was discovered when she was 17 years old. I cannot determine the number of occasions Defendant raped his daughter, but it is obvious from the information provided that the abuse was ongoing. This conduct occurred in the states of Hawaii and Florida.

The child complied with sexual demands of Defendant out of fear that he would inflict physical injury upon her if she refused. This fear was based in part on his explicit threats and in part on his violent behavior in the home. Specifically, Defendant told the victim that

if she reported his conduct, she would be responsible for destroying the family.

The sexual abuse delivered by Defendant included vaginal and oral penetration, and on occasion the acts were "aggressive and forceful." On at least one occasion Defendant pinned the victim's hands behind her back while vaginally penetrating her, and on another occasion, he wrapped a cord around her neck while administering the abuse. The acts would occur in the family home and in motels when the family was traveling in connection with Defendant's military service. The abuse would occur when the mother was working or when Defendant sent her on errands. Other times, Defendant would commit the abuse behind closed doors while other family members, including the victim's younger sisters, were in the house.

Defense counsel described this case as being among the most egregious in federal court. That description is accurate. The conduct of this Defendant was unusually cruel. Unlike so many crimes prosecuted in this court, there is a direct victim. That victim is a child who was entitled to the protection of a father. Defendant was a father only in a biological sense — he betrayed the trust he owed and deprived the victim of a normal childhood. The Government presented a letter from the victim's mother that described the devastation to Defendant's family caused by Defendant's conduct, but it understates the damage Defendant has inflicted on the victim.

The nature and circumstances of this offense weigh heavily against Defendant.

18 U.S.C. § 3553(a)(1)—History and Characteristics of Defendant

In assessing the history and characteristics of Defendant, I have relied on the Presentence Report, the reports of Jacquelyn Olander, Ph.D. and Susan Spicer, Ph.D.,

statements of counsel, and Defendant's statements at sentencing. The psychological reports are unremarkable. Defendant is of above average intelligence and is not diagnosed as having a mental illness. Defendant has a history of alcohol abuse, but he has no history of mental illness. He scores "high average" or "above average" on intelligence tests and has an "average" memory.

Defendant was one of seven children. At least five of his siblings are doing well; one is a housewife, one an attorney and state representative, one an accountant and pastor, one a government contractor, and one is a banker. Defendant does not know the occupation of one brother.

Defendant has served as a technician in the United States Air Force and attained the rank of E-7. He has twice been awarded the Air Force Commendation Medal and the Kuwait Liberation Medal.

Defendant has shown regret for his actions.

Apart from Defendant's conduct leading to the charges in this case, Defendant's history and characteristics do not weigh heavily one way or the other.

18 U.S.C. § 3553(a)(3)—Kinds of Sentences Available

As indicated by the Statutory Guidelines Score and the statutory maximum sentence of life in prison for the offense of conviction, a lengthy prison sentence is required in this case.

18 U.S.C. § 3553(a)(4) and (5)—Sentencing Guidelines and Policy Statements

The Court has considered the advisory sentencing guidelines and given them some weight. Although there is a 5-level increase pursuant to USSG § 4B1.5(b)(1), the guidelines

do not account for the duration of the abuse suffered by the victim. The guidelines also fail to adequately take into account the repeated threats made to victim in a successful effort to keep her from seeking help by reporting the abuse. Thus, Defendant was able to continue the abuse.

Neither the Probation Officer nor the parties have cited any relevant Guidelines policy statements.

18 U.S.C. § 3553(a)(6)—Need to Avoid Unwarranted Sentencing Disparity

I have given this factor careful consideration. Fortunately, cases similar to this are rare in federal court, making consideration of this factor more difficult to assess. To the extent there is disparity between the sentence imposed in this case and others involving the same offense of conviction, that disparity is accounted for by the facts contained in the Presentence Report and those summarized above. This factor does not weigh in favor of Defendant.

18 U.S.C. § 3553(a)(7)—Need to Provide Restitution to Victims

Restitution is an issue in this case, although the amount and method of payment have not yet been established. Regardless of the issue of restitution, the offense requires a lengthy prison sentence. The fact that the sentence imposed exceeds the Guidelines range is given no weight.

18 U.S.C. § 3553(a)(2)(D)—Provide Defendant with Needed Education, Medical Care

Defendant does not have a need for education or medical care.

18 U.S.C. § 3553(a)(2)(B)—Deterrence, 18 U.S.C. § 3553(a)(2)(C)—Protection of the Public, and 18 U.S.C. § 3553(a)(2)(A)—Reflect the Seriousness of the Offense

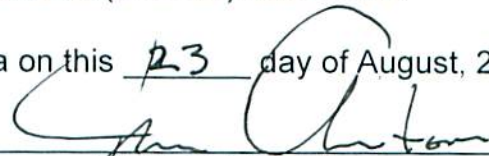
Of primary importance in sentencing is the need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment." 18 U.S.C. § 3553(a)(2)(A). This factor encompasses all other sentencing factors. The conduct of Defendant was cruel and despicable. A lesser sentence would not meet these statutorily mandated goals of sentencing.

While a very lengthy prison sentence less than that imposed may meet the requirements that it provide protection to the public and deter Defendant from committing crimes in the future, the sentence imposed is necessary as deterrence to others.

Conclusion

In conclusion, I have considered the statutory purposes of sentencing and all of the statutory factors contained in § 3553(a) in determining the sentence in this case. I have exercised my discretion in determining the weight to be given to each. In the end, I come to the conclusion that a sentence of Life is the correct sentence for Defendant Shawn Alan Marshall. Defendant's Motion to Reconsider Sentence (Doc. 39) is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on this 23 day of August, 2013.



JOHN ANTOON II
United States District Judge

Copies furnished to:
United States Marshal
United States Attorney
United States Probation Office
United States Pretrial Services Office
Counsel for Defendant
Shawn Alan Marshall

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

vs

SHAWN ALAN MARSHALL

Case Number: 6:13-cr-53-Orl-28KRS

USM Number: 58253-018

Stephen J. Langs, FPD
Suite 300
201 S. Orange Ave
Orlando, FL 32801

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Count Two of the Indictment. Accordingly, the Court has adjudicated the defendant guilty of the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. §§ 2242(1) and 7	Knowingly Causing a Minor Female to Engage in Sexual Acts	November 30, 2012	Two

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Count One of the Indictment is dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

August 21, 2013


JOHN ANTOON II
UNITED STATES DISTRICT JUDGE

August 27, 2013

Shawn Alan Marshall
6:13-cr-53-Orl-28KRS

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Life.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Shawn Alan Marshall
6:13-cr-53-Orl-28KRS

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 Years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The mandatory drug testing requirements of the Violent Crime Control Act are imposed. The Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

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10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, the defendant is directed to submit to random drug testing.
2. The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or making an obligation for any major purchases without approval of the Probation Officer. You shall provide the probation officer access to any requested financial information.
3. The defendant shall participate in a mental health program specializing in sex offender treatment and submit to polygraph testing for treatment and monitoring purposes. The defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the Probation Officer base on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.
4. The defendant shall register with the state sexual offender registration agency(s) in any state where you reside, visit, are employed, carry on a vocation, or are a student, as directed by your probation officer. The probation officer will provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S.943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct you to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.
5. The defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate, including: schools, daycare centers, theme parks, playgrounds, etc.
6. The defendant is prohibited from possessing, subscribing to, or viewing, any video, magazine, or literature depicting children in the nude and/or in sexually explicit positions.
7. The defendant shall not possess or use a computer with access to any online service at any location (including employment) without written approval from the probation officer. This includes access through any Internet service provider, bulletin board system, or any public or private computer network system. The defendant shall permit routine inspection of your computer system, hard drives, and other medial storage materials, to confirm adherence to this condition. This inspection shall be no more intrusive than is necessary to ensure compliance with this condition. The defendant shall inform your employer, or other third party who may be impacted by this condition, of this computer-related restriction and the computer inspection provision of the condition.

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8. The defendant shall submit to a search of your person, residence, place of business, any storage units under the defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. You shall inform any other residents that the premises may be subject to a search pursuant to this condition.
9. The defendant shall cooperate in the collection of DNA, as directed by the Probation Officer.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$100.00	\$0	*Deferred

*The determination of restitution is deferred. Pursuant to 18 U.S.C. §3664(d)(5), a date for the final determination of victim losses is to be set by separate order and will not exceed ninety (90) days.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid in full prior to the United States receiving payment.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

The Special Assessment in the amount of **\$100.00** is due in full and immediately.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 6:13-CR-53-ORL-28KRS

SHAWN ALAN MARSHALL,

Defendant.

_____ /

NOTICE OF APPEAL

Notice is hereby given that Shawn Alan Marshall, Defendant above named, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the Judgment in a criminal case entered in this action on August 27, 2013. Doc 44.

Dated this 29th day of August 2013.

Respectfully submitted,

Donna L. Elm
Federal Defender

/s/Stephen J. Langs

Stephen J. Langs
Assistant Federal Defender
Florida Bar No. 0137227
201 S. Orange Avenue, Suite 300
Orlando, Florida 32801
Telephone: 407-648-6338
Facsimile: 407-648-6095
E-Mail: stephen_langs@fd.org

CERTIFICATE OF SERVICE

I hereby certify that undersigned electronically filed the foregoing *Notice of Appeal* with the Clerk of Court (CM/ECF) by using the CM/ECF system which will send a notice of electronic filing to Andrew Searle, Assistant United States Attorney, this 29th day of August 2013.

/s/Stephen J. Langs

Attorney for Marshall

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:13-CR-53-ORL-28KRS

.
UNITED STATES OF AMERICA :
Plaintiff : Orlando, Florida
v. : May 8, 2013
SHAWN ALAN MARSHAL : 11:00 a.m.
Defendant :
.

TRANSCRIPT OF CHANGE OF PLEA
BEFORE THE HONORABLE KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: Andrew Searle

For the Defendant: Stephen J. Langs

Court Reporter: Amie R. First, RPR, CRR
AmieFirst.CourtReporter@gmail.com

Proceedings recorded by FTR Gold Digital Recording.

Transcript produced by Computer-Aided Transcription.

P R O C E E D I N G S

THE DEPUTY CLERK: Case Number
6:13-CR-53-ORL-28KRS, United States of America versus Shawn
Alan Marshall.

Counsel, please state your appearances for the
record.

MR. SEARLE: Good morning, Your Honor. On behalf
of the United States, Andrew Searle. Seated with me at
counsel table is FBI Special Agent Mathew Pagliarini.

THE COURT: Good morning.

MR. LANGS: Good morning, Your Honor. Steve Langs
on behalf of Mr. Marshall who is seated to my left.

THE COURT: Good morning. I thought I noted a
typographical error in the plea agreement. Has that been
corrected?

MR. SEARLE: Yes, Your Honor. I apologize for
that.

THE COURT: That's all right. Have you had a
chance to talk to Mr. Marshall about that?

MR. LANGS: He signed off on it and initialed it.

THE COURT: All right. I understand that
Mr. Marshall wishes to plead guilty to count two of the
indictment today pursuant to the plea agreement.

MR. LANGS: He does.

THE COURT: All right. Thank you very much.

1 I'm just looking up the reference to 18, U.S.C.,
2 Section 7. Is that the special territory on a maritime
3 jurisdiction?

4 MR. SEARLE: Yes, Your Honor.

5 THE COURT: Okay.

6 Okay. Mr. Marshall, I'm not the judge who is
7 going to sentence you if you plead guilty. I'm a
8 magistrate judge. I can conduct a guilty plea proceeding
9 with your permission.

10 I have a document signed by you indicating you
11 agree to let me do that; is that correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: What I'm going to do is place you
14 under oath and ask you some questions. The first group of
15 questions will be designed to make sure you understand what
16 the proceeding is about.

17 And then I'm going to talk to you about what the
18 Government would have to prove before you could be found
19 guilty of the charge in count two.

20 We'll go over the penalties you face and the
21 rights you lose. We'll also talk about the promises in the
22 plea agreement.

23 At the end, I'm going to ask you about what you
24 did to make sure your conduct violates the crime to which
25 you wish to plead guilty.

1 Because you will be under oath, if anything you
2 tell me is not completely truthful, you could be separately
3 prosecuted for perjury or making a false statement, and
4 anything you tell me here today could be used against you
5 in that prosecution.

6 So if you do not understand something I ask,
7 please let me know. I'll try to ask it more clearly.

8 Your lawyer will be here throughout the
9 proceeding. You can speak to him privately at any time.

10 We make a record of what occurs through a digital
11 recording, which is the reason for the microphones. So if
12 you will continue to answer my questions out loud rather
13 than nodding or shaking your head, we'll be able to capture
14 your answers.

15 Do you have any questions before I go further?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: You do not need to stand or raise your
18 hand, but Mr. Jackson is going to place you under oath.

19 (Defendant sworn.)

20 THE DEFENDANT: Yes, sir, I do.

21 THE DEPUTY CLERK: Please state your name for the
22 record.

23 THE DEFENDANT: My name is Shawn Alan Marshall.

24 THE COURT: Mr. Marshall, have you ever been known
25 by any other name?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: How old are you?

3 THE DEFENDANT: I am 50 years old.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT: Basically high school with some
6 post high school both government training and what they
7 call technical college, but I did not graduate. I have no
8 college degrees.

9 THE COURT: Okay. You read, speak, and understand
10 English?

11 THE DEFENDANT: I beg your pardon, ma'am?

12 THE COURT: Do you read, speak, and understand
13 English?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Okay.

16 THE DEFENDANT: I apologize. I'm having a little
17 bit of difficulty hearing you. I have a little bit of
18 weakness in my hearing. I apologize.

19 THE COURT: I can speak up. Is that better?

20 THE DEFENDANT: That's better. Thank you, ma'am.

21 THE COURT: All right. Good.

22 Are you a citizen of the United States?

23 THE DEFENDANT: Yes, I am.

24 THE COURT: The next questions are to make sure
25 you're thinking clearly today.

1 Have you ever been under the care of a
2 psychologist or a psychiatrist?

3 THE DEFENDANT: No.

4 THE COURT: Are you currently taking medicine of
5 any kind?

6 THE DEFENDANT: Just antibiotics and
7 decongestants.

8 THE COURT: All right. Anything about the
9 underlying cold or the other issues for which you're being
10 treated for antibiotics or the medicine itself making you
11 unable to think clearly today?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Okay. Other than those two
14 medications you told me about, in the last two days, have
15 you had any other drugs, alcohol, or medication?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Is there anything interfering with
18 your ability to understand what's going on here today?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: All right. I'm going to talk to you
21 next about the charge you propose to plead guilty to which
22 is contained in count two of the indictment.

23 Have you had a chance to review this indictment
24 with your attorney before today?

25 THE DEFENDANT: Yes, I have.

1 THE COURT: All right. Count two alleges that
2 beginning on or about March 16, 2011, and continuing
3 through on or about November 30, 2012, at Patrick Air Force
4 Base in Brevard County in the Middle District of Florida
5 and within the territorial jurisdiction of the United
6 States you knowingly caused a minor female to engage in
7 sexual acts -- that is, penetrating the minor female's
8 vagina with your penis and causing your mouth to have
9 contact with the minor female's vagina -- by threatening
10 the minor female and placing the minor female in fear.

11 This is a violation of Title 18, United States
12 Code, Section 2242 sub 1 and Title 18, United States Code,
13 Section 7.

14 Before you could be found guilty of that offense,
15 the United States would have to prove beyond a reasonable
16 doubt that you caused a minor female to participate in
17 sexual acts; that you did that by threatening her or
18 placing her in fear; that you did these acts knowingly,
19 which means you did them voluntarily -- no one forced you
20 to do them -- and that the acts occurred within the special
21 territorial jurisdiction of the United States.

22 Do you understand what would have to be proved
23 before you could be found guilty of that count?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You have the right to have the full

1 indictment read, and I'm happy to do that; or you could
2 waive or give up the reading if you've been through it.

3 Would you like me to read the rest of the
4 indictment for you?

5 THE DEFENDANT: I'll waive it, ma'am.

6 THE COURT: All right. Have you had enough time
7 to talk with Mr. Langs, your attorney, about the charges in
8 the indictment and the plea agreement?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: Are you satisfied with his services
11 representing you in this case?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Mr. Langs, any question as to your
14 client's competency?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Any from the United States?

17 MR. SEARLE: No, Your Honor.

18 THE COURT: Mr. Marshall, I find you are competent
19 which simply means able under the law to plead guilty if
20 you want to plead guilty, but you don't have to plead
21 guilty.

22 I have a number of things I need to talk with you
23 about yet. So if at any point you decide you do not want
24 to plead guilty, let me know. We'll stop this proceeding,
25 and the case will go on as previously scheduled.

1 The next thing I need to talk to you about is the
2 reason you're proposing to plead guilty.

3 First, has anyone done anything you think is wrong
4 or unfair, threatened you in any way to get you to plead
5 guilty to this charge?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Do you want to plead guilty because
8 you've committed the crime or for some other reason?

9 THE DEFENDANT: I did commit the crime, ma'am.

10 THE COURT: All right. I have a document entitled
11 plea agreement. I know you've seen it. But I'm going to
12 ask Mr. Jackson to hand it to you.

13 I just want to make sure it is your plea
14 agreement, that you've initialed every page, any change,
15 and signed it at the end.

16 MR. LANGS: Thank you, Your Honor. We've reviewed
17 the plea.

18 THE COURT: Thank you. Is that your plea
19 agreement, Mr. Marshall?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Is that the plea agreement of the
22 United States?

23 MR. SEARLE: Your Honor, may I just have one
24 moment?

25 THE COURT: Sure.

1 MR. SEARLE: Yes, Your Honor.

2 THE COURT: Okay. Mr. Marshall, none of the
3 judges -- sir?

4 MR. LANGS: I'm sorry, Your Honor.

5 THE COURT: That's all right.

6 MR. LANGS: I just want to make sure our record is
7 complete.

8 As you go through that, you'll notice that
9 Mr. Marshall's initials and signature throughout the course
10 of the plea agreement are in different colors.

11 During the course of my explanation, during the
12 course of our discussion with that plea agreement, we used
13 two different colored pens.

14 So he had raised a question about that. He didn't
15 remember doing that while we were talking about it. And
16 the initial pages, I went through that. We stopped, had
17 another substantive discussion about what was going on in
18 terms of the agreement. I gave him another pen which
19 happened to be a different color.

20 That's the reason for two different colors on that
21 plea agreement. He mentioned that, I don't remember two
22 colors. I clearly do. We discussed that, but we confirm
23 that that is the plea agreement that we went over.

24 THE COURT: All right. Mr. Marshall, the
25 different colors are on pages 13, 14, and 15. I'm happy to

1 give this back to you and let you review it again now to
2 make sure that, in fact, you agreed to all of those pages.

3 Would you like to do that?

4 THE DEFENDANT: No, ma'am. I did examine the
5 initials, and it looks like my handwriting. So I'm
6 satisfied, ma'am.

7 THE COURT: Okay. And the same with the end note
8 that's initialed in a black pen. That's your initial as
9 well?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. None of the judges of the court
12 helped to write the plea agreement. So it will be up to
13 Judge Antoon to decide whether or not to accept the terms
14 of the plea agreement.

15 Did you read the plea agreement all the way
16 through before you signed it?

17 THE DEFENDANT: Yes, ma'am, I did.

18 THE COURT: Did you talk to your lawyer about it
19 before you signed it?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you believe you understand the plea
22 agreement?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Have you had enough time to talk to
25 him today about the change -- actually, a correction of a

1 typographical error in the penalty/fine provision? That
2 part --

3 THE DEFENDANT: Yes.

4 THE COURT: -- where it said --

5 THE DEFENDANT: Yes.

6 THE COURT: -- \$25,000 but it's really \$250,000?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Well, then, I'm not going to
9 read the whole plea agreement, but I am going to go over
10 the promises you make to the United States and the promises
11 the United States makes to you.

12 When I'm done, I'm going to ask you if you think
13 there are any other promises that didn't get written in the
14 plea agreement.

15 You agree to plead guilty to count two of the
16 indictment, which is the charge we just went over.

17 At the top of page 2, it tells you the penalties,
18 the maximum penalties you face. Count one carries a
19 maximum sentence of up to life imprisonment; a fine of up
20 to \$250,000 or twice the gain or loss caused by the
21 offense; a term of supervised release of five years up to
22 life; and you would be required to pay a special assessment
23 of \$100 at the time of sentencing.

24 MR. LANGS: Sorry, Your Honor. You said count
25 one.

1 THE COURT: Count two. It says count one. I'm
2 reading.

3 MR. LANGS: I noticed that.

4 THE COURT: Okay. Let's fix it.

5 MR. SEARLE: I apologize, Your Honor.

6 MR. LANGS: I should have --

7 THE COURT: You know, we got three sets of eyes on
8 it, and we all should have seen it. I read it ahead of
9 time and --

10 MR. LANGS: As soon as you read it out loud --

11 THE COURT: -- caught the fine but not that one.
12 Yep.

13 MR. LANGS: Wait a minute.

14 That's not right. One more.

15 MR. SEARLE: I was wondering about that myself. I
16 read it earlier. I should have said something.

17 THE COURT: As long as we're at a pause, I might
18 as well ask, the charge, the statute doesn't expressly
19 require prove that the victim was a minor, but that's the
20 way it's charged.

21 Is that an -- I'm getting ahead of myself, but is
22 that an essential element? I know what's been agreed to.
23 Is that an essential element of a 2242 charge?

24 MR. LANGS: It's not. I mean, factually.

25 THE COURT: Factually, it makes a difference. And

1 for sentencing guideline purposes it will make a
2 difference.

3 MR. LANGS: Right. Right.

4 THE COURT: Okay. I just want to make sure I was
5 looking at the right version of the statute.

6 MR. LANGS: There's a lot of relevant conduct
7 that's involved in all of this that is going to come into
8 play.

9 THE COURT: Got it.

10 MR. LANGS: Yet essential elements of what we've
11 explained, what I've gone over, what we understand.

12 THE COURT: Okay. Thank you.

13 All right. Mr. Marshall, this last change we made
14 in paragraph two at the top of page 2 was simply to
15 correctly indicate which count of the indictment you're
16 intending to plead guilty to.

17 That count, which is count two, carries a maximum
18 sentence of up to life imprisonment, a fine of up to
19 \$250,000 or twice the gain or loss as a result of the
20 offense, whichever is greater; a term of supervised release
21 of five years up to life; and you would be required to pay
22 a special assessment of \$100 at the time of sentencing.

23 In addition, if anyone was injured, any property
24 was damaged, or anybody lost money as a result of the
25 commission of the offense, you could be required to pay

1 restitution to the victim of the offense and, in fact,
2 later on in the plea agreement you agree to make full
3 restitution to the minor female victim described in count
4 two of the indictment.

5 At the bottom of page 2, it tells you at the time
6 of sentencing the remaining count against you, which is
7 count one, will be dismissed.

8 Top of page 3 indicates that if the Court accepts
9 this plea agreement, the United States Attorney's Office
10 for the Middle District of Florida agrees not to charge you
11 with committing any other federal crime known to the United
12 States Attorney's Office at the time the plea agreement was
13 signed that relates to the conduct giving rise to the plea
14 agreement.

15 Paragraph six on page 3 is the agreement to make
16 restitution. I've already mentioned.

17 Judge Antoon is going to look at something called
18 the sentencing guidelines to help to decide what sentence
19 you should receive. He's required to look at the
20 guidelines. He's not required to impose a sentence within
21 the guideline range.

22 Paragraph seven tells you that the United States
23 will recommend that you be sentenced within the guideline
24 range as determined by the Court.

25 Then there are some recommendations on the next

1 page about how the sentencing guidelines should be
2 computed.

3 Paragraph eight says, at the time of sentencing,
4 in the event that there is no adverse information
5 suggesting this recommendation should not be made, the
6 United States will not oppose your request that you receive
7 a two-level subtraction or downward adjustment for
8 acceptance of responsibility.

9 Both the recommendation that the judge sentence
10 you within the guideline range and the recommendation about
11 the acceptance of responsibility reduction are just that,
12 recommendations.

13 If the Court does not follow them, you would not
14 be allowed to withdraw your guilty plea for that reason.

15 Paragraph nine tells you that if you are convicted
16 of this offense, you will be required to comply with the
17 provisions of the Sex Offender Registration and
18 Notification Act which we sometimes refer to as SORNA,
19 S-O-R-N-A.

20 That requires that you keep -- you register and
21 keep your registration current in the place where you live,
22 in the place where you work, and the place where you are in
23 school.

24 Failure to comply with the requirements of SORNA
25 could cause you to be charged with a separate felony

1 offense.

2 Moving ahead to page 6, paragraph four, at the
3 bottom, imposes certain financial disclosure requirements
4 on you. You agree to complete and submit to the United
5 States Attorney's Office within 30 days from the date you
6 signed this plea agreement an affidavit reflecting your
7 financial condition which is true and correct.

8 You further agree to sign any documents requested
9 by the United States needed to obtain any records from
10 others of assets owned by you directly or indirectly, and
11 you consent to the release of your tax returns for the
12 previous five years.

13 You also agree and authorize the U.S. Attorney's
14 Office to provide to and obtain from the United States
15 Probation Office various financial records for the purpose
16 of making recommendations to the Court and for collecting
17 any assessments, fines, restitution, or other financial
18 obligations ordered by the Court.

19 You also authorize the U.S. Attorney's Office to
20 obtain current credit reports. On the bottom of page 8, it
21 talks about your right to appeal from a mistake in your
22 sentence. And I want to talk with you about that for a
23 moment.

24 First, let me tell you that if you plead guilty,
25 you are admitting for all time that you are guilty. You

1 give up any defenses or excuses you may have. You give up
2 any motions Mr. Langs has filed or you've talked with him
3 about filing, and you give up the right to come back to
4 this court or go to another court later on and argue that
5 you should not have been found guilty.

6 The right to come back to this court or go to
7 another court is called the right to appeal. So if you
8 plead guilty, you have no right to appeal from the finding
9 that you are guilty.

10 If you think the judge makes a mistake in the
11 sentence you receive, though, you usually do have the right
12 to ask to have that mistake corrected by filing a direct
13 appeal to the next higher court, which is called the Court
14 of Appeals.

15 Under the plea agreement, you're giving up some of
16 your rights to appeal from a mistake in your sentence. You
17 can only do that if the sentence is, excuse me, above the
18 guideline range as determined by the Court, more than the
19 maximum permitted by the law, or if the sentence violates
20 the Eighth Amendment to the Constitution, which is your
21 protection against cruel and unusual punishment.

22 If the Government appeals from your sentence,
23 though, then you could appeal for any reason.

24 Do you understand how that limits your right to
25 appeal from a mistake in your sentence?

1 THE DEFENDANT: Yes, ma'am, I do.

2 THE COURT: Is that a right you're willing to give
3 up?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Page 9 tells you that this plea
6 agreement only binds the Office of the United States
7 Attorney for the Middle District of Florida not other
8 prosecutors, but the U.S. Attorney's Office agrees to bring
9 your cooperation, if any, to the attention of others if
10 they're asked to do that.

11 No forfeiture applicable to this count,
12 Mr. Searle?

13 MR. SEARLE: No, Your Honor.

14 THE COURT: Okay. Mr. Marshall, those are all of
15 the promises written in the plea agreement. Do you believe
16 anyone has made you any other promise about what sentence
17 you will receive or anything else that will occur in
18 exchange for your plea of guilty?

19 THE DEFENDANT: No, ma'am. No one has made me any
20 promises.

21 THE COURT: All right. I've talked a little bit
22 about the sentencing guidelines. Have you and Mr. Langs
23 talked about how they might apply in this case?

24 THE DEFENDANT: Yes, ma'am, we have.

25 THE COURT: I can't tell you today what the

1 sentencing guideline range will be for you because I don't
2 have all the information I need to do that.

3 If you plead guilty, the Court's probation officer
4 will conduct an investigation. They'll look at what
5 happened here. They'll look at whether you have any prior
6 criminal history. They will determine whether you accepted
7 responsibility, things of that nature, and they'll prepare
8 a written report.

9 You and Mr. Langs will receive a copy of the
10 report before the sentencing. So will the attorney for the
11 United States.

12 If there's anything in the report you think is not
13 correct, Mr. Langs can make objections. If the objections
14 aren't worked out before the sentencing, then Judge Antoon
15 will hold a hearing, and he'll rule on the objections.

16 Only at the point the report is done and the
17 objections are ruled on will there be enough information to
18 know for sure what the sentencing guidelines are in this
19 case.

20 You have a very good criminal defense attorney
21 representing you, and I know he's giving you his best
22 estimate of the sentencing guideline range; but he can't
23 know for sure until the report is done and the objections
24 are ruled on.

25 So it's important for you to understand that if

1 the sentencing guideline range or the sentence turns out to
2 be something different than you expect it to be, you would
3 not be allowed to withdraw your guilty plea for that
4 reason.

5 Is that clear?

6 THE DEFENDANT: Yes. I understand that.

7 THE COURT: All right. We don't have parole in
8 the federal prison system anymore. That used to be a kind
9 of early release program. Now if you're sentenced to a
10 term in jail, you'll serve almost all, if not all, of any
11 term of imprisonment imposed.

12 I mentioned supervised release as part of a
13 possible sentence. That's a time a person serves under the
14 supervision of the Court's probation office after getting
15 out of jail.

16 There would be things you had to do and things you
17 could not do as conditions of supervised release.

18 If you violated a condition of supervised release,
19 your supervised release could be taken away. You could be
20 sent back to jail to serve the term of supervised release
21 in addition to the time you served on the original
22 sentence.

23 Because this is a sex offense crime, after you
24 complete any term of imprisonment imposed, there may be an
25 evaluation to determine whether it is safe to release you

1 back into society.

2 If it's determined that it is not, then you face a
3 potential additional term of civil commitment. That's not
4 something that we can address at this point of the
5 proceedings, but I need to give you the worst-case basis as
6 I go through penalties.

7 Finally, you will be required to cooperate in the
8 collection of a DNA sample if required under the law.

9 Any other penalties which apply to Mr. Marshall?

10 MR. SEARLE: No, Your Honor.

11 THE COURT: All right. Mr. Marshall, do you
12 understand all the possible penalties that apply if you
13 plead guilty to this charge?

14 THE DEFENDANT: Yes, ma'am, I do.

15 THE COURT: I need to tell you next about the
16 rights you give up by pleading guilty.

17 You do have the right to a trial before a jury
18 composed of 12 people. During the trial, you would be
19 presumed to be innocent. The United States would have to
20 prove that you were guilty beyond a reasonable doubt. You
21 wouldn't have to prove anything.

22 During the trial, the witnesses would have to come
23 into court and testify in front of you. Your lawyer could
24 ask them questions, and he could ask the judge to keep out
25 all or parts of anything the witness has said and all or

1 parts of any other evidence offered against you.

2 You would also have the right to have witnesses
3 and evidence brought into court and presented to the jury
4 on your behalf.

5 During the trial, you could testify, talk to the
6 jury under oath, if you wanted to. But you'd also have the
7 right not to testify. And neither the judge nor the jury
8 could decide you did anything wrong based on your decision
9 not to testify.

10 That's your right against self-incrimination. It
11 gives you the absolute right to remain silent.

12 If you plead guilty and the district judge accepts
13 your plea, do you understand there will be no trial?
14 You'll give up all these rights I've talked about,
15 including the right to remain silent, and the judge will
16 find you guilty based upon your guilty plea?

17 THE DEFENDANT: I understand.

18 THE COURT: All right. If you -- this is a felony
19 offense. So if you are convicted, you will lose your civil
20 rights. Those include but are not limited to the right to
21 vote, to keep and bear firearms, to hold public office, and
22 to serve on a jury.

23 There is a right you do not give up by pleading
24 guilty, and that's the right to have a lawyer represent you
25 in this case.

1 If you decide to go to trial, Mr. Langs is going
2 to represent you all the way through the trial and at every
3 other part of the case.

4 If you decide to plead guilty, he's going to
5 represent you all the way through the sentencing.

6 If you think the judge makes a mistake in the
7 sentence you receive and you want to take a direct appeal,
8 the Court would appoint an attorney to represent you for
9 the direct appeal if you couldn't afford to hire someone.

10 I've talked about many things. Do you have any
11 questions about anything I've talked about?

12 THE DEFENDANT: No, ma'am. I don't believe so.

13 THE COURT: Do you have any questions about
14 anything in the plea agreement I didn't specifically review
15 with you?

16 THE DEFENDANT: No, ma'am. I have no questions.

17 THE COURT: All right. Tell me what it is you did
18 that makes you guilty of the crime charged in count two of
19 the indictment.

20 MR. LANGS: If I can, Your Honor, because it's
21 going to be one little correction.

22 THE COURT: Okay.

23 MR. LANGS: In terms of the factual basis,
24 obviously Mr. Marshall and I have gone over the factual
25 narrative at pages 11 through 14 of the plea agreement.

1 At one hand, on page 14, the very last sentence, I
2 knew you would find out. I included an end note in that
3 matter just in terms of the specific language to make that
4 correction.

5 And then back on page 12, in the first full
6 paragraph, the very last sentence where the last sentence
7 begins with, while the family was still living in Hawaii,
8 as a factual matter, Mr. Marshall is contesting that point.

9 In talking with Mr. Searle, he suggested best
10 evidence is contrary to back that up. But because it
11 really constitutes relevant conduct, it doesn't go to the
12 elements of the offense.

13 I want to make that correction, if you will, or at
14 least that notation in terms of the factual narrative.

15 Otherwise, having gone through the factual
16 statement, through the factual narrative, Mr. Marshall
17 agrees to that. We certainly agree that the Government can
18 prove these allegations beyond a reasonable doubt.

19 In terms of specifically at Patrick Air Force Base
20 in Brevard County, in the Middle District of Florida, we
21 would agree that he had an unlawful, inappropriate
22 relationship with his minor daughter.

23 I want to make the record clear as to those
24 particular two points constitute relevant conduct,
25 sentencing matters. They don't go to the essence of the

1 charge.

2 THE COURT: Well, we're talking about Patrick Air
3 Force Base. Any dispute that that's where the crime
4 occurred as within the exclusive territorial jurisdiction
5 of the United States?

6 MR. LANGS: No, ma'am.

7 THE COURT: All right.

8 MR. LANGS: As a matter of fact, one of the --
9 just for fun, one of the issues that we talked about in
10 count one alleges Hillsborough County. And I had some
11 talks with Mr. Searle about that.

12 But in terms of count two, obviously that
13 specifically alleges Patrick Air Force Base. That is
14 within the territorial jurisdiction of the United States.

15 So having said that, we're comfortable with
16 jurisdiction in the factual statement. We would abide by
17 the factual statement in light of the sensitivity of the
18 history. I think the Government did a fairly good job of
19 encapsulating that as well.

20 THE COURT: All right. Mr. Searle, some of your
21 colleagues have told me from time to time that if there is
22 an objection to any part of a factual basis, the United
23 States will not go forward.

24 Is the United States willing to proceed on the
25 plea agreement in light of what Mr. Langs has said?

1 MR. SEARLE: One moment, Your Honor.

2 THE COURT: Sure.

3 MR. SEARLE: So long as the defendant is willing
4 to state in his own words --

5 THE COURT: Oh, we're going to do that.

6 MR. SEARLE: -- what exactly he did. We don't
7 actually have any problem with the amendment that Mr. Langs
8 made in the plea agreement relating to a sentence on page
9 14.

10 But with respect to the other sentence that he has
11 an issue with, it's the Government's position that we would
12 be able to prove that aspect of the plea agreement.

13 But we're prepared to go forward notwithstanding.

14 THE COURT: Okay. You wouldn't withdraw the plea
15 agreement --

16 MR. SEARLE: No.

17 THE COURT: -- based upon that dispute?

18 MR. SEARLE: No, no.

19 THE COURT: Okay. All right.

20 All right. Mr. Marshall, without using names of
21 the victim, tell me in your own words what it is you did
22 that makes you guilty of the crime charged in count two.

23 THE DEFENDANT: Ma'am, I did have an inappropriate
24 relationship with my daughter.

25 THE COURT: Well, inappropriate relationship is

1 something different than knowingly causing a minor female
2 to engage in sexual acts.

3 Did you do that?

4 THE DEFENDANT: Yes, ma'am, I did.

5 THE COURT: Did you threaten her or otherwise
6 place her in fear to get her to do that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Was she under 18 years of age when
9 these events occurred?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Anybody force you to do this?

12 THE DEFENDANT: No. No one forced me to do this.

13 THE COURT: You did it voluntarily?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And did the acts alleged in count two
16 -- and there are dates in there -- occur within Patrick Air
17 Force Base, the grounds of Patrick Air Force Base?

18 THE DEFENDANT: Yes, it did occur.

19 THE COURT: All right. Factual basis from the
20 United States?

21 MR. SEARLE: Your Honor, I would just ask the
22 defendant, did the sexual acts include his penetrating the
23 minor female's vagina with his penis and cause his mouth to
24 have contact with the minor female's vagina?

25 THE DEFENDANT: Yes, it did.

1 THE COURT: Okay. Thank you.

2 Does the United States rely on the facts in the
3 plea agreement as its factual basis?

4 MR. SEARLE: Yes, Your Honor.

5 THE COURT: All right. Mr. Marshall, with the
6 exception of the sentence on page 12 that Mr. Langs
7 referred to and considering the correction made in the end
8 note, are these facts correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Well, I find based upon
11 what you tell me and the facts that the United States says
12 it could prove that the facts are sufficient to allow you
13 to plead guilty, if you still want to do that.

14 I told you when we started you did not have to
15 plead guilty. Now we're getting to the point where I'm
16 going to ask you what you'd like to do.

17 First, is there anything you want to tell me or
18 ask me that bears on your decision to plead guilty that we
19 haven't talked about?

20 THE DEFENDANT: If I might have a moment to
21 reflect, ma'am.

22 THE COURT: Sure.

23 Have you had enough time to talk to your lawyer?

24 THE DEFENDANT: Yes, ma'am, I have.

25 THE COURT: Is there anything that you want to

1 tell me or ask me that bears on your decision to plead
2 guilty that we haven't talked about?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Do you need to change anything you
5 told me under oath which you think might not have been
6 completely truthful?

7 THE DEFENDANT: No, ma'am. Everything I've told
8 you has been truthful.

9 THE COURT: After I started speaking up into the
10 microphone, have you been able to hear me clearly?

11 THE DEFENDANT: Yes. It's been --

12 THE COURT: Okay.

13 THE DEFENDANT: It's been satisfactory. Thank
14 you.

15 THE COURT: Any part of the proceeding that you
16 could not hear that you'd like us to go back over?

17 THE DEFENDANT: No, ma'am. I heard it. If I
18 didn't hear it, I would have asked.

19 THE COURT: All right. Would you like to talk to
20 your attorney further before I ask you how you'd like to
21 plead?

22 THE DEFENDANT: No, ma'am. I believe we're all
23 right.

24 THE COURT: All right. Does the victim wish to be
25 heard at this point?

1 MR. SEARLE: No, Your Honor.

2 THE COURT: All right.

3 All right. Mr. Marshall, how then do you plead to
4 the charge in count two of the indictment?

5 THE DEFENDANT: Ma'am, I plead guilty.

6 THE COURT: Are you freely and voluntarily
7 entering this plea of guilty?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: I determine that this plea of guilty
10 is knowingly, intelligently, and voluntarily made. It's
11 not the result of force, threats, or promises except for
12 the promises contained in the plea agreement.

13 I will recommend that Judge Antoon accept both
14 your guilty plea and the plea agreement.

15 Sentencing is usually at least 75 days from today,
16 because that's how long it takes to do the presentence
17 report.

18 I don't have a sentencing date for you, but
19 Mr. Langs will let you know when it's set. He'll also
20 explain the presentence process to you.

21 Anything else we can take care of for the United
22 States?

23 MR. SEARLE: No, Your Honor. Thank you.

24 THE COURT: For the defense?

25 MR. LANGS: No, Your Honor. Thank you.

1 THE COURT: Mr. Searle, if you would, file the
2 plea agreement -- refile the plea agreement with the
3 changes we've made when you get back to your office.

4 MR. SEARLE: Yes, Your Honor.

5 THE COURT: Thank you very much. We're in recess.

6 (Proceedings adjourned at 11:36 a.m.)
7

8 C E R T I F I C A T E
9

10 I certify that the foregoing is a correct
11 transcript from the record of proceedings in the
12 above-entitled matter.

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14 s\Amie R. First, RPR, CRR
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:13-CR-53-ORL-28KRS

.
UNITED STATES OF AMERICA :
Plaintiff : Orlando, Florida
v. : August 21, 2013
SHAWN ALAN MARSHAL : 9:40 a.m.
Defendant :
.

REDACTED TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN ANTOON, II
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Carlos Perez-Irizarry
Andrew Searle

For the Defendant: Stephen J. Langs

Court Reporter: Amie R. First, RPR, CRR
AmieFirst.CourtReporter@gmail.com

Proceedings recorded by mechanical stenography.

Transcript produced by Computer-Aided Transcription.

1 P R O C E E D I N G S

2 THE DEPUTY CLERK: This is the case of United
3 States of America versus Shawn Alan Marshall. Case Number
4 6:13-CR-53.

5 Will counsel please state their appearances for
6 the record?

7 MR. PEREZ: Good morning, Your Honor. Carlos
8 Perez for the United States. I understand that the
9 Government has made a late appearance in this case. I
10 apologize to the Court.

11 Another AUSA was getting the file for me from the
12 AUSA who is supposed to be here.

13 THE COURT: So you don't have the file yet?

14 MR. PEREZ: Right. The file is coming. I'm
15 familiar with the case.

16 THE COURT: I think Mr. Irick might have it for
17 you.

18 MR. PEREZ: Thank you, Your Honor.

19 MR. LANGS: Good morning, Your Honor. Steve Langs
20 on behalf of Mr. Marshall, and he appears to my left.

21 THE COURT: The attorney who is assigned to this
22 case is Mr. Searle, the attorney for the Government. I
23 want Mr. Searle to be present at the conclusion of this
24 hearing.

25 MR. PEREZ: Yes, Your Honor.

1 THE COURT: Sir, would you stand and state your
2 name, please?

3 THE DEFENDANT: Shawn Alan Marshall.

4 THE COURT: And, Mr. Marshall, would you raise
5 your right hand and be sworn, please?

6 THE DEFENDANT: Yes, sir.

7 (Defendant sworn.)

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Why don't you come forward and stand
10 at the lectern with your attorney.

11 Mr. Marshall, have you had any pills, drugs,
12 medication, or alcohol within the past 48 hours?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have you been under the care of a
15 psychiatrist or psychologist for a mental or emotional
16 disorder in the past?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you have any reason to believe that
19 you suffer from such a disorder now?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you thinking clearly and
22 exercising your best judgment this morning?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Marshall, on May 8, 2013, you
25 entered a plea of guilty to count two of the indictment

1 charging you with knowingly causing a minor female to
2 engage in sexual acts in violation of Title 18, United
3 States Code, Sections 2242(1) and 7. The Court has
4 previously accepted your guilty plea and adjudged you
5 guilty of that offense.

6 We've now reached that stage in the proceedings
7 where I must ask questions of you, your attorney, and the
8 attorney for the Government.

9 First, have you had an opportunity to read and
10 discuss the presentence report?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any objections as to the
13 factual accuracy of that report?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you wish to make any objections to
16 the probation officer's application of the guidelines?

17 MR. LANGS: Your Honor, we just have the one
18 objection.

19 THE COURT: Okay. Do you want to argue that
20 objection, or do you want to rest on your written
21 objections?

22 MR. LANGS: No. I'll just briefly say I don't
23 have a point of authority for Your Honor. I don't have any
24 governing case law for Your Honor. I guess I would take
25 the position this really isn't -- the argument that I'm

1 making is an issue of first impression in that we have a
2 plea agreement.

3 THE COURT: Tell me how applying the additional
4 levels is inconsistent with the provision, the guideline
5 provision.

6 MR. LANGS: Well, I think that the idea that I'm
7 positing is the concept of relevant conduct. 4B1.5, I
8 would suggest, as a policy matter is aimed at those
9 individuals that exhibit or show a pattern, a history of
10 this type of behavior.

11 THE COURT: Well, isn't that -- how is that
12 inconsistent with the facts of this case?

13 MR. LANGS: Because I think the presentation of
14 the case captures that relevant conduct for purposes of the
15 guidelines, meaning had the Government, for example,
16 charged in the indictment one instance from Patrick Air
17 Force Base rather than alleging a large period, if you
18 will --

19 THE COURT: Well, don't you agree that they could
20 have prosecuted each and every act?

21 MR. LANGS: Sure.

22 THE COURT: Okay. And they didn't?

23 MR. LANGS: Absolutely. And they didn't.

24 THE COURT: So why is that not a pattern?

25 MR. LANGS: Well, the benefit -- it is a pattern,

1 certainly, because the charge here is the abuse of his
2 minor daughter. That's kind of the ongoing continuing
3 charge, at least that's the position I take.

4 And in light of the plea agreement, the way that
5 we structured it, in capturing all of this behavior, I
6 think is kind of the benefit of what we had to do here.

7 So I agree with you, Your Honor. 4B1.5, on the
8 face of it, would certainly apply. I agree with you on
9 that point.

10 But in trying to advocate for a proper or the most
11 beneficial application of the guidelines to Mr. Marshall, I
12 think under these unique circumstances, the way that the
13 Government charged it, complained in the complaint, the
14 plea agreement, everything has been captured in this
15 relevant conduct notion such that 4B1.5 would essentially
16 be double counting, if you will, adding on.

17 But otherwise, yeah, there's certainly a pattern
18 here. That's what's been charged. That's what
19 Mr. Marshall has admitted to and accepts responsibility
20 for.

21 And, again, it's an issue of first impression.
22 And I don't have any authority to -- the annotations
23 certainly didn't help. And I'm left standing here just
24 pitching the argument.

25 And unfortunately for Mr. Marshall in that regard,

1 should the Court rule against that position, obviously we
2 don't have the opportunity to appeal it. So it's Your
3 Honor's decision in the first instance from start to end to
4 say yay or nay.

5 THE COURT: Does the Government wish to be heard?

6 MR. PEREZ: Yes, Your Honor.

7 We stand by the recommendation of the probation
8 office and the analysis of the probation office. I think
9 that Mr. Langs' request is more one of leniency than a
10 legal argument.

11 I think that how the charges were structured in
12 this case and the plea agreement was structured in this
13 particular case, those two factors do not preclude or
14 prohibit the application of the guideline portion in this
15 particular case.

16 In fact, as the Court correctly pointed out, we
17 could have charged these individual acts in separate
18 counts, and they could have been charged in multiple
19 districts.

20 THE COURT: Yeah.

21 MR. PEREZ: It's relevant conduct in the sense
22 that the presentence report encompasses and includes all
23 those facts which could have been charged individually, and
24 there is nothing inconsistent with the sentencing
25 guidelines or within the policy of the Sentencing

1 Commission and how this Court should view or should
2 consider the relevant conduct which includes all those
3 facts.

4 And, therefore, the Government stands by the
5 presentence report and objects to the defendant's request.

6 THE COURT: The objection is overruled.

7 Are there any other objections, Mr. Langs?

8 MR. LANGS: No, sir.

9 THE COURT: Do you agree, Mr. Marshall?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Does the Government have any
12 objections?

13 MR. PEREZ: No, Your Honor.

14 THE COURT: The Court adopts the factual
15 statements and guideline applications contained in the
16 presentence report.

17 As to the controverted guideline application, the
18 Court adopts the position of the probation office as stated
19 in the addendum and, therefore, determines that the
20 advisory guidelines are total offense level 38; criminal
21 history category I; 235 to 293 months imprisonment; 5 years
22 to life -- 5 years to life supervised release; restitution
23 to be determined; \$25,000 to \$250,000 fine; \$100 special
24 assessment.

25 Is the victim or a representative of the victim in

1 the courtroom at this time?

2 MR. PEREZ: No, Your Honor.

3 THE COURT: Do you know of any reason why the
4 Court should not now proceed with imposition of sentence?

5 MR. LANGS: Not from defense, Your Honor.

6 THE COURT: Do you wish to make a statement or
7 present any information in mitigation?

8 MR. LANGS: If I may.

9 We have degrees of cases that come before your
10 Court. And as one appears before you regularly, Your
11 Honor, this probably is at or near the top of
12 egregiousness. And this is a tough case. And hopefully --

13 MR. PEREZ: Your Honor, if I may -- I apologize
14 for interrupting. The Court asked me if the victim was in
15 court.

16 Mr. Searle went out to get the agents and the
17 agents actually have a letter statement from the victim.

18 THE COURT: Okay. I'll take that up in a minute.

19 MR. PEREZ: Okay. Thank you, Your Honor.

20 THE COURT: You may proceed, Mr. Langs.

21 MR. LANGS: Thank you, Your Honor.

22 And I think, I hope, the Court had a chance to
23 read and go over Dr. Spicer's and Dr. Olander's written
24 report. I think that is a meaningful substitute of any
25 written sentencing memorandum I could present.

1 We all know why we're here. I perennially ask two
2 questions. What is it that my client did wrong? And what
3 are we going to do about it?

4 We know what Mr. Marshall did wrong, and he will
5 be the first to tell you that it was despicable and
6 reprehensible.

7 And I think the bigger question now is what are we
8 going to do about it? Well, we know the guidelines suggest
9 19 to 24 years, approximately. The Court certainly has up
10 to the rest of Mr. Marshall's natural life to play with.

11 And I hope that when either Mr. Searle or
12 Mr. Perez address Your Honor that rather than arguing or
13 rehashing what it is that he did and rather than rearguing
14 and rehashing the call and need for retribution and
15 punishment that they from their standpoint can offer
16 something constructive in terms of what we should do in a
17 case like this and what we should do for Mr. Marshall.

18 I can't offer you anything other than the
19 intangibles. I have the benefit. I have the advantage.
20 You all don't. I get to spend quality time with
21 Mr. Marshall at the jail. I get to spend that quiet time
22 with him at the jail. I get to develop a relationship with
23 Mr. Marshall through my position as his lawyer.

24 And when I first met him, he was a wreck. And in
25 the six months that he's been in Orange County Jail, even

1 that little amount of time away has given him an
2 opportunity, I hope, to suggest that he understands what he
3 did, how he got here, what must happen, what is going to
4 happen, and why it is.

5 The damage has been done. You'll hear from him,
6 Your Honor. He is profusely going to apologize. But I
7 think he does so now clear minded, having had a chance to
8 get away from alcohol, having had a chance to at least
9 appreciate some of the demons that he's suffering.

10 And I would advocate the position that his -- from
11 a humanist perspective, from an organic perspective that
12 are we going to exercise -- and I feel strongly about
13 this -- a sense of taking the easy path and merely
14 punishing him and protecting the neighborhood by locking
15 him up and throwing away the key, or are we going to invest
16 something in Mr. Marshall as a human being?

17 He's a decorated military man. He was with the
18 Air Force for 20-some odd years. He had a family. He had
19 a wife. He had an upbringing. He has a father. He has
20 all of those things that we all bring to the table. But he
21 did something extremely evil, and now he has to pay for
22 that.

23 And in my talks with him, I hope he understands
24 that. I have my 19-year-old daughter. I have been posited
25 with people, how can you stand there and represent that

1 type of individual?

2 And I have a personal belief that everyone is
3 entitled and has the right to have one person, at least one
4 person, stand on his behalf. And I take that badge with
5 honor at this point.

6 Because really, Your Honor, in terms of actually
7 imposing that sentence, considering all the factors
8 enumerated at 3553(a), trying to mete out a decision that
9 satisfies the calls for punishment and deterrence,
10 protection and rehabilitation, Mr. Marshall, I hope, is
11 that individual who is more than worthy of redemption and
12 that he can atone for his wrongdoing.

13 He's going to have a long time in prison to do
14 that. But I don't want this to be a piling on matter. And
15 when the Court accepts his daughter's impact statement,
16 when the Government gets up here and wags its finger at
17 Mr. Marshall and calls him a bad man, I think from our
18 perspective, my side of the table, yes, he did those
19 things. He did evil, heinous, atrocious things, and we are
20 in that position where we're dealing with the quote,
21 unquote, "worst of the worst," if you will.

22 But even then there is something good within
23 Mr. Marshall. There is something that is redeeming. And
24 I'm hoping the Court, in addition to Dr. Olander's report
25 and in addition to the presentence report and in addition

1 to all the totality of the circumstances that Mr. Marshall
2 brings to the table, that at a minimum we have some
3 illustration of empathy, some type of compassion, something
4 that meets the statutory requirements in what Congress
5 calls for you to do.

6 I'm hoping it will be something less than what the
7 guidelines call for. If he didn't have that five-level
8 enhancement, for example, he would be at that 11-year mark.
9 Maybe that's the appropriate sentence in this case. Maybe
10 that's sufficient, not greater than necessary, to meet the
11 goals of sentencing.

12 But it's a complex case. This isn't shades of --
13 I shouldn't say that. This isn't just merely black and
14 white.

15 THE COURT: Why is it complicated?

16 MR. LANGS: Because it's easy to say, throw away
17 the key, lock him up and be done with him.

18 He's 50 years old. And I think a sentence of 20
19 years or something less than that might afford him the
20 opportunity to become a better person while behind bars and
21 have the chance to get out. And maybe, just maybe,
22 reestablish a relationship, in particular, with his
23 daughter. I hope. I hope.

24 And at this point, all I can let Mr. Marshall know
25 is that at least if he -- when he goes to prison, he goes

1 so with my hopes and with my prayers. And I feel the wiser
2 and I feel the better for having gotten to know
3 Mr. Marshall in the sense that he certainly is a prime
4 example of the frailties and failings of a human being.

5 And the question is -- and, fortunately, Your
6 Honor, I don't have to answer it today -- what are we going
7 to do about it? But I hope that Mr. Marshall will take the
8 opportunity the Court gives him and uses it to better
9 himself in light of the terrible, terrible acts that he
10 committed.

11 So having said that, Mr. Marshall, this would be
12 your opportunity to address His Honor. And is there
13 anything that you'd like to say before he imposes a
14 sentence?

15 THE DEFENDANT: Your Honor, I do understand that
16 what I did was horrible. That should not happen to a
17 child. That should not happen within a family.

18 I wish I had the opportunity to stand here and
19 begin to explain how sorry I am to my family, to [REDACTED], to
20 the little ones, how I destroyed an entire family, an
21 entire organization.

22 As Mr. Langs says, since I've been sitting there
23 for all of this time, and to think, it's just that. It's
24 just with the constant drinking, the constant alcoholism,
25 that demon on my back, the depression. And then the

1 deviance that I saw in my family as a child, I just -- I
2 don't know how, but I didn't see it as horribly sick and as
3 wrong as it was. I was constant -- it's like I had a
4 constant cloud behind or in front of me.

5 I look forward to the opportunity to get some kind
6 of treatment, therapy, counseling, to further understand
7 myself and to start making fundamental changes that changed
8 the very essence of who I am in certain areas of my being,
9 of my life.

10 And with -- you know, just hoping for mercy to be
11 able to step out and to right that wrong, to -- you know,
12 if nothing else, to get out there and help someone else to
13 avoid falling into that pit, to avoid them, you know,
14 letting all of these things pile on your back and control
15 who they are and lead them down such a grim road.

16 Like I said, I can't begin to explain, you know,
17 how sorry I could tell -- not just [REDACTED], but Jeri and my
18 little ones and everyone, everyone. My country even.

19 I -- you know, that's still a part of me. As I'm
20 standing now on the opposite side of where I used to be. I
21 used to be on that side, fighting along, and now I'm on the
22 other side.

23 Anyway, I don't mean to drag on, sir, but yes. It
24 was horribly, horribly wrong, and I would do anything to
25 work to become a new human being.

1 MR. LANGS: May we sit while the Government
2 addresses you, Your Honor?

3 MR. PEREZ: Your Honor, let me just correct the
4 record as to the statement that we have. The victim impact
5 statement is from the victim's mother.

6 And we also have a declaration of victim losses
7 that we are going to provide to the probation office. And
8 I will announce it to the Court in terms of the
9 restitution.

10 Your Honor, my sentencing allocution is going to
11 be along the lines of an entire movement from actually
12 whose principle and best known expert -- it happens to be
13 Gabriel García Márquez from Colombia. It's called the
14 magical realism. And I'm going to be going back into the
15 future and back and forth.

16 Yesterday we had a luncheon which I attended in
17 which we talked about the dire state of the judicial
18 budget, the public defenders, the Department of Justice.

19 As I have said many times when I used to come to
20 court before I became a manager -- and I will continue to
21 say it today -- that I know no better lawyers in the Middle
22 District of Florida, and in Orlando in particular, than
23 those lawyers working for the public defender's office.

24 While we ask members of the executive branch and
25 at times members of the federal judiciary who I have

1 traveled overseas with to promote the good of law and
2 changes in the judicial system in Latin America and other
3 parts of the country, we always tell them, look at us, how
4 we do things. Look at our budget. We are always open 24
5 hours for business; criminal and, if need be, in civil
6 cases.

7 Nowadays, because of the sequester, we cannot do
8 that. So it is extremely difficult for us -- as members of
9 the executive branch to go down south, down range, as they
10 say in the military, and actually ask them to reform their
11 system to promote the rule of law and democracy when we in
12 the United States may no longer be able to do that.

13 Which then brings me to the second point.
14 Coincidentally, yesterday, I got an Email from one of my
15 neighbors. And the Email was about the first day of school
16 in 2007 in an elementary school in Arkansas.

17 The teacher had 27 students in her history class.
18 And what she did with the permission of the superintendent
19 of the public school system, the school principal, and the
20 parents was to remove the 27 desks.

21 When the kids walked into the classroom, there
22 were no desks. And what the teacher told them was, you
23 have to tell me how you earn having a desk for you to see
24 it in the classroom.

25 At the end of the day, there were no desks in the

1 classroom. The kids didn't have the answers. The parents
2 didn't have the answers.

3 Then 27 men in uniform, veterans of the United
4 States Armed Forces walked in with the 27 desks. And what
5 the teacher told them and told the kids and the parents
6 was, you earn to have a desk and sit on your desk in class
7 because of the sacrifices those 27 men did on your behalf.

8 Those 27 men were members of the United States
9 Army. I would venture to say the United States Navy and
10 the United States Air Force from World War II and Korea and
11 Vietnam.

12 The defendant dishonored the uniform and the oath
13 that he took when he became a member of the United States
14 Air Force to protect the people, the citizens of the United
15 States, and this country.

16 Not only did he dishonor the uniform, he
17 dishonored his country. But what is sad is that he
18 dishonored his own daughter. That is the most troubling
19 aspect of this case.

20 And Mr. Langs talked about what do we do? I have
21 spent some quality time with the defendant, quiet time of
22 the defendant. Let's not throw the key.

23 Because the defendant, according to what Mr. Langs
24 would like us to believe, is that at the end of the day he
25 has some social redeeming value. That is between the

1 defendant, Mr. Marshall, his conscience, and God.

2 The United States is recommending, pursuant to the
3 terms of the plea agreement, a sentence within the
4 guideline range, a guideline sentence, as calculated by the
5 probation office.

6 And at this point in time, I am going to read the
7 letter, and I'm going to make sure that Mr. Langs gets a
8 copy and that the Court file gets a copy.

9 The letter starts, Dear Sir, (The Judge),

10 I urge you to consider the full extent of what
11 Shawn Marshall has done. He tortured and destroyed his
12 oldest daughter, physically, mentally, and emotionally, and
13 his other children with emotional stress and trauma.

14 Physically by raping [REDACTED] repeatedly, over and
15 over, in the course of a four-year period, making her
16 submit to sexual conduct and depravity.

17 Mental torture by threatening her with a
18 statement, do not tell your mom. It will hurt her and
19 destroy the family.

20 Emotionally, by knowing that what Shawn was doing
21 to her was inhumanly wrong but not knowing what to do about
22 it.

23 Along with the reason as to why he was doing this
24 to her, no matter what answer that comes forth as to why,
25 there is no justification for what Shawn has done.

1 Sir, my [REDACTED] was a sweet, beautiful child, full
2 of love and grace, loyal and a steadfast to many. Now
3 she's not.

4 She never had a chance to fulfill a young girl's
5 dreams, her first crush, her first boyfriend, her first
6 innocent kiss but instead has to live with the knowledge
7 that the man -- that the man whom she once called father
8 took that away against her will. The memory and constant
9 reminder is horrible and ugly that will always stay with
10 her.

11 Was there any choice given to her? No. Why would
12 the courts or anyone consider any mercy or leniency for
13 Shawn? He never showed any to his daughter.

14 Did Shawn give any consideration to [REDACTED]? No.
15 Not for any one of his other five children and myself, his
16 wife.

17 Did Shawn give any thought of how the act of
18 raping an -- and I'm going to say -- redact from this
19 point, and I am going to ask the Court to redact the first
20 name of the victim that I mentioned pursuant to the Victims
21 and Witness Protection Act.

22 THE COURT: The motion is granted.

23 MR. PEREZ: Did Shawn give any thought of how the
24 act of raping blank would destroy her or the rest of the
25 family? No.

1 Just the thought acknowledged that Shawn did so
2 without any remorse for he did rape blank many times. He
3 does not care and will never have remorse for any of his
4 actions. Because I, for one, have experienced it.

5 For years, I prayed that a change would come with
6 my love and my faith in God. But now I know that it would
7 never have come about.

8 Shawn didn't want to change. So, again, I ask,
9 why should there be any thought of giving him, Shawn, a
10 lesser punishment other than the maximum?

11 The fact that blank will live with what Shawn did
12 to her for the rest of her life. Now, my blank live in
13 shame, hate, remorse, because of Shawn.

14 Shame, because of what he did to her repeatedly.
15 She can hardly look at me, her mother, or be around me for
16 the fear of judgment. Shawn put that fear and shame in
17 blank's mind and heart.

18 I would state until my dying days -- I will state
19 until my dying days, there will never be any judgments from
20 me towards my blank.

21 I cry for my little girl continuously, for her
22 pain, her heart-stopping sobs of wanting to know why Shawn
23 did this to her.

24 Shawn wasn't a random stranger whom he caused her
25 pain. No, it was her father. So the pain is deep.

1 Shawn Marshall did that. Every day she will wake
2 up with the knowledge that she is forever changed. Healing
3 from this may never come about. Accepting it, she has no
4 choice.

5 Let me say it, that is to be sin. Shawn Marshall
6 did that to blank, his daughter.

7 Remorse so fills -- remorse so fills her that she
8 has applied self-separation from her brothers and sisters
9 because she feels she was the catalyst in destroying the
10 family she so loves. This, again, is completely untrue.

11 Shawn destroyed us all. The brothers and sisters
12 have and will continue to reach out to her with open arms
13 of love, but her pain is so great it's so hard for her to
14 accept. Shawn Marshall has done that.

15 Hate, yes, hate, for what Shawn did to her. If
16 you ever had a chance to look into my blank's eyes, you
17 would see the same turmoil that goes on within her mind,
18 knowing that God has ordained that children should respect
19 and honor their father and mother. But coming to the truth
20 of this, Shawn had no respect for her as a person.

21 Hate dwells deep within my blank, for she had
22 believed Shawn love her as a father should love his child
23 but in turn hurt her in the most despicable, grievous
24 manner. Shawn Marshall did that.

25 As to the other children, my sons have lost their

1 foundation. They followed and took advice from a person
2 whom they thought was showing them the true path of being a
3 man. So I pray daily that they will still trust me when I
4 say you're good. It was his choice of doing that
5 horrendous act and his alone. That is no reflection on
6 you, my sons. Shawn Marshall did that.

7 As for my younger daughters, they're destroyed,
8 even though they try to be brave for Mom. They were thrown
9 into a nightmare with no understanding as to how or why it
10 was happening. Shawn Marshall did that to his youngest
11 daughters.

12 The mental and emotional trauma is still being
13 worked through with therapist. Shawn Marshall did that.

14 As for me, well, I have a long road ahead,
15 children to help stand up tall and straight, small hands to
16 take ahold of and lead them the best I can. For I am one
17 of his victims also and have to go to therapy myself.

18 I have been put into financial catastrophe of
19 immeasurable proportion because of accountability of being
20 married to him for so long. Having to be fully responsible
21 for all of the accumulated debt, no matter if it's joint or
22 not. I'm supporting and providing for my younger children
23 alone, whether it is food, clothing, medical, and housing.

24 Having no access to any of Shawn's income,
25 military retirement, has been denied by him. It is

1 payback, if you would, for stopping him.

2 Not being given a full power of attorney to help
3 ascertain any kind of resolution in how to solve the
4 financial burden or to obtain a continuous medical plan to
5 cover the recovery of my children's mental well-being has
6 been denied. (These two would come from the military
7 retirement.)

8 THE COURT: I'm not understanding that. What is
9 she saying?

10 MR. PEREZ: I think that -- let me read it again,
11 and I will tell the Court what I think she's saying.

12 Not being given a full power of attorney to help
13 ascertain any kind of resolution in how to solve the
14 financial burden or to obtain a continuous medical plan to
15 cover the recovery of my children's mental well-being has
16 been denied.

17 THE COURT: She is saying the defendant did not
18 give her the power of attorney?

19 MR. PEREZ: Yes. She doesn't have a full power of
20 attorney. And she's also saying that the defendant denied
21 her and the family the benefit of his medical pension.

22 MR. LANGS: I'm going to disagree with that point,
23 Your Honor.

24 MR. PEREZ: I'm just reading what the letter says.
25 She's basically saying that the money to pay for the mental

1 therapy would be coming from the military retirement.
2 Because if I read this letter correctly, she's saying that
3 the only source of income for her would be the military
4 pension.

5 Then the next sentence reads, this is another form
6 of control towards me and the children and revenge for
7 standing against Shawn in what he did.

8 Shawn Marshall has done that, and he's continuing
9 to do so. This dilemma will affect the younger girls in so
10 many ways. I could start listing them, but one just has to
11 stop and think and it will become obvious.

12 This will also affect my blank because not being
13 given the proper authority, I cannot help her in any
14 medical capacity which she's still entitled to.

15 I cannot give my children any hope that tomorrow
16 will be easier. All I can give them is that I will
17 continue to fight. And that fight will also include giving
18 my blank some small justification that a wrong has been
19 punished.

20 It will never return her innocence, never
21 completely overcome her pain. However, it might give her a
22 small amount of comfort and peace later on in years knowing
23 that Shawn Marshall can never do what he did to another
24 young girl or her sisters what he did to her.

25 Eternity in prison would not be enough of a

1 punishment for Shawn Marshall. But then, again, my blank
2 will have an eternity of knowing that some justice was
3 served.

4 So, again, I respectfully request that you, sir,
5 will take in all that I have said and apply it towards the
6 justice that my blank should have.

7 I have spent some quality time with Shawn in the
8 quiet environment of the jail, and he has some value.
9 That's what Mr. Langs said, paraphrasing.

10 As I have said many times, judges have the most
11 difficult role in the criminal justice system because of
12 judges' duty to impose a sentence.

13 Would I refer to Mr. Marshall as a man? Maybe
14 because biologically he was born a man. Would I refer to
15 him as a man or as a father? Of course not.

16 What father, what man, what human being, meaning
17 the terms man and father, would ever do that to his
18 daughter? Not a man and not a father.

19 One would truly define what a father should be,
20 what a father ought to be, what a man should be, what a man
21 ought to be, how a father should act, ought to act, how a
22 man should act, ought to act, in the presence of his
23 daughter, with a daughter.

24 How can we try to justify or explain that because
25 of some alcoholism that made me do it? How human beings

1 justify their behavior at times escapes me.

2 And the only thing that I think is it is just an
3 excuse. What happened to the victim was done by the person
4 who got entrusted to raise her, to provide for her, to
5 pamper her, to spoil her, to educate her. As a man and as
6 a father, Mr. Marshall didn't do any of that.

7 At the end of the day, what we have is a girl who
8 was raped, tortured, submitted to unspeakable acts by
9 obeying her God entrusted with guiding her through life.
10 She'll never have that.

11 Pursuant to the terms of the plea agreement, the
12 United States recommends a sentence within the guideline
13 range.

14 THE COURT: What is your understanding --

15 MR. PEREZ: Your Honor, if I may, let me just
16 state the restitution amount, if I may.

17 The declaration of victim loss, it says, I, blank,
18 with the address, am a victim in the above-referenced case,
19 and I believe that I'm entitled to restitution in the total
20 amount of \$400.

21 My specific losses as a result of this offense are
22 as follows: At least two tanks of gas going to and from
23 interviews and meetings along with attending two court
24 hearings. Also missing approximately a month of work.

25 I have been compensated by insurance and another

1 source with respect to all of a portion of my losses in the
2 amount of zero dollars.

3 Signed, blank Marshall.

4 THE COURT: There was a reference in the
5 presentence report to the children not being in school.

6 Can you tell me what the facts are?

7 MR. SEARLE: Your Honor, on behalf of the United
8 States, Andrew Searle. I would just like to apologize on
9 the record to the Court as well as the Court staff and to
10 defense counsel for my tardiness.

11 THE COURT: I appreciate the apology. We'll take
12 the matter up at the end of this hearing.

13 MR. SEARLE: My understanding is that the children
14 were home schooled up until they were being taken into
15 custody by DCF. I don't know what the status is from
16 there, but they were being home schooled up until that
17 point.

18 THE COURT: They were?

19 MR. SEARLE: Yes.

20 THE COURT: Is that the probation officer's
21 understanding as well, that they were being home schooled?

22 PROBATION OFFICER: That is information provided
23 to me by the defendant.

24 THE COURT: Do you know any of the details of
25 that?

1 PROBATION OFFICER: No, sir.

2 THE COURT: Who was providing it?

3 PROBATION OFFICER: No.

4 MR. SEARLE: And, Your Honor, according to the
5 case agent, they are now in school, in public school.

6 THE COURT: And this abuse started at age 14?

7 MR. SEARLE: Yes, Your Honor.

8 THE COURT: When did it end?

9 MR. SEARLE: I believe it continued until November
10 of 2012 when the child was, I think, 17.

11 THE COURT: Okay. Thank you.

12 Mr. Langs, do you wish to be heard in rebuttal?

13 MR. LANGS: I guess just briefly, just as a
14 technical matter, Mr. Marshall has always stood ready to
15 help out in terms of domestic issues.

16 This idea of the power of attorney, I reached out
17 to his wife a number of times. They've made clear they
18 didn't want to have any communication with us.

19 The logistics of having whatever form they need
20 signed, I mean, it's not as if Mr. Marshall is
21 intentionally or maliciously withholding anything. He's
22 asked time and time again how do I provide my wife with
23 that necessary ability? And we stand ready to do that.

24 However, the dependency court in Brevard County
25 wants to handle it, DCF, his wife. That's kind of an issue

1 there.

2 THE COURT: Do you know whether there's been a
3 power of attorney signed?

4 MR. LANGS: No, there hasn't been because none of
5 the appropriate forms have been sent or mailed to
6 Mr. Marshall. I don't know the appropriate form that they
7 want.

8 You know, I know that, from my experience, a
9 general form that you buy from Staples isn't necessarily
10 honored wherever you have to go. So without having any
11 communication with the family, because they don't want to
12 talk to me, I don't know how best to help them. I can
13 certainly act as a liaison however they want in this
14 regard.

15 But I don't want the Court thinking he's sitting
16 in Orange County saying I'm not going to do anything. So
17 for his benefit, yeah, anything he can do to help out his
18 wife, certainly.

19 In terms of restitution, \$400, we certainly don't
20 object to that if that's the claim. I haven't read that.
21 I haven't received a copy of that. Just listening to
22 Mr. Perez talk. But we certainly don't object to \$400 in
23 this instance.

24 And ultimately again, Your Honor, I think the hard
25 part about this case is what to do. And Mr. Perez, as

1 always, is very eloquent. But in terms of his allocution,
2 I didn't hear any suggestion other than to say by the plea
3 agreement give him a guideline sentence in terms of what we
4 need to do here.

5 So again, Your Honor, you've been doing this an
6 awfully long time. I agree with everyone here in the
7 courtroom, this is a bad case. But ultimately the question
8 falls to you in terms of what we need to do here.

9 THE COURT: Thank you, Mr. Langs.

10 The Court will take a recess. I have another
11 hearing at 11:00. So I will be back before 11:00 to
12 conclude this hearing.

13 (Recess at 10:33 a.m.)

14 THE COURT: Please come to the lectern with your
15 client, Mr. Langs.

16 I'm sorry. The Court will be in recess just for
17 one minute.

18 (Recess at 10:56 a.m.)

19 THE COURT: You know, this is the first sentence
20 that I've imposed since the attorney general announced the
21 other day that we as a system, as a Government need to
22 revisit the question of sentencing. The frequency and
23 length of sentences of incarceration have caused him to
24 reassess what we're doing. And most judges I know agree
25 with that sentiment, and I do too.

1 Often the guideline range is extreme given the
2 nature of the crime committed. I don't recall ever having
3 exceeded the recommended guideline range, although
4 post-Booker at least in this court and I believe in the
5 courts of my colleagues, not just here in the Middle
6 District but everywhere, downward departure has become
7 commonplace. It's become routine.

8 At the beginning of this hearing, Mr. Langs
9 observed that this case is at the high end of a scale of
10 egregiousness of cases that we have here in federal court.
11 And that's certainly an accurate observation based on my
12 tenure.

13 In fact, the case -- the facts of this case are
14 more egregious than any I've had to address as a federal
15 judge. I've not had one like this. Similar cases are,
16 unfortunately, not rare in state court where I served
17 before coming here.

18 And, interestingly, the facts of this case would
19 require a more severe sentence in state court than called
20 for by the guidelines, based on the facts, not necessarily
21 the charge.

22 I've considered the guideline factors. I've
23 considered the recommendation of the Government. I've
24 considered the argument of defense counsel. And I always
25 pay close attention to the wonderful product that I'm

1 provided by the probation office.

2 I've considered the nature and circumstances of
3 the offense, which are spelled out in detail in the
4 presentence report to which there has been no objection,
5 and I've adopted as my findings of fact in this case.

6 Those facts could be summarized as -- in a
7 number -- using a number of adjectives, I suppose.

8 But as I said, in the end, this is egregious, more
9 egregious than any I've seen here. They include really
10 depriving a child of a normal life. I don't know how a
11 child can ever recover from what this child has endured.

12 There may be some psychologist somewhere that says
13 that's possible; but my guess is, based on a lot of
14 experience in handling these kinds of cases, that you
15 couldn't find one.

16 Human will and human ability to endure is amazing,
17 and perhaps, perhaps this child is one that is resilient
18 enough to have some kind of decent life. I certainly hope
19 so.

20 The child was repeatedly raped for at least two
21 years. I don't know how many months. Sometimes it was
22 done with threats. Sometimes it was done with restraint.
23 Sometimes it was done with violence.

24 This is accounted for in the guidelines, of
25 course, but here is the man whose role it was to protect

1 this child inflicting this kind of pain and torture, mental
2 and physical abuse on his own daughter.

3 There's no way to know what kind of toll that took
4 on the other members of the family, I suppose. But I doubt
5 that they have much hope of ever erasing all of this.

6 I've taken into account the defendant's history
7 and characteristics and the fact that he was in the
8 military and got a Commendation Medal with an oak leaf
9 cluster.

10 I've taken into account the comments of both
11 attorneys who say that he has value. And I agree with
12 that. I think every human life has value.

13 Nonetheless, the conduct of this defendant is
14 despicable and his conduct, what he's actually done,
15 overshadows what value he might have in the future.

16 At one point during allocution, he said he wanted
17 to right this wrong. Oh, wouldn't that be wonderful if it
18 were possible? It's not possible to right this wrong.

19 I've taken into account the psychological reports,
20 which I don't find remarkable. They say that Mr. Marshall
21 has remorse, and I don't doubt that he does.

22 Taking into account sentencing disparity and the
23 need to avoid sentencing disparity is difficult because,
24 really, we don't see these kind of cases in federal court.
25 It's a first for me. And I don't know that my colleagues

1 here in the -- at least this division have had such a case.
2 But I'm cognizant of that certainly.

3 I've also taken into account the need to provide
4 restitution.

5 But I think that the guidelines do not adequately
6 reflect the seriousness of the offense. I don't think they
7 adequately promote respect for the law. I don't think that
8 they adequately provide just punishment in this case. I
9 think they probably go some distance in affording adequate
10 deterrence to criminal conduct.

11 The Court has asked defendant why judgment should
12 not now be pronounced; and after hearing defendant's
13 response, the Court finds no cause to the contrary.

14 The parties have made statements on their behalf,
15 and the Court has reviewed the presentence report and
16 advisory guidelines.

17 Pursuant to Title 18, United States Code, Sections
18 3551 and 3553, it's the judgment of the Court that the
19 defendant, Shawn Alan Marshall, is hereby committed to the
20 custody of the Bureau of Prisons to be imprisoned for a
21 term of life.

22 Upon release from imprisonment, you shall, if you
23 ever are released, you'll serve ten years on supervised
24 release. While on supervised release, you shall comply
25 with the standard conditions adopted by the Court in the

1 Middle District of Florida.

2 In addition, you shall comply with the following
3 special conditions.

4 You shall participate in a substance abuse
5 program, outpatient, inpatient, or both, and follow the
6 probation officer's instructions regarding implementation
7 of this directive.

8 Further, you shall contribute to the cost of these
9 services not to exceed an amount determined reasonable by
10 the probation office's sliding scale for substance abuse
11 treatment services.

12 During and upon completion of this program, you're
13 directed to submit to random drug testing.

14 You shall participate in a mental health program
15 specializing in sexual offender treatment and submit to
16 polygraph testing for treatment and monitoring purposes.
17 You shall follow the probation officer's instructions
18 regarding implementation of this directive.

19 Further, you shall contribute to the cost of such
20 treatment and polygraph examinations not to exceed an
21 amount determined reasonable by the probation officer based
22 on ability to pay or availability of third-party payment
23 and in conformance with the probation office's sliding
24 scale for treatment services.

25 You shall register with the state sexual offender

1 registration agency in any state where you reside, visit,
2 are employed, carry on a vocation, or are a student as
3 directed by the probation officer.

4 You shall provide the state officials with all
5 information required under Florida Sexual Predator and
6 Sexual Offender Notification and Registration Statutes,
7 Florida Statute 943.0435, and Sex Offender Registration and
8 Notification Act, Title I of the Adam Walsh Child
9 Protection and Safety Act of 2006, Public Law 109-248, and
10 may direct you to report to these agencies personally for
11 required additional processing such as photographing,
12 fingerprinting, and DNA collection.

13 You shall have no direct contact with minors --
14 that is, children under the age of 18 -- without written
15 approval from a probation officer and shall refrain from
16 entering into any area where children frequently congregate
17 including schools, day care centers, theme parks,
18 playgrounds and the like.

19 You are prohibited from possessing, subscribing to
20 or viewing any images, videos, magazines, literature, or
21 other materials depicting children in the nude or sexually
22 explicit positions.

23 You shall not possess or use a computer with
24 access to any online service at any location, including
25 employment, without written approval from the probation

1 officer.

2 This includes access through any Internet service
3 provider, bulletin board system, or any public or private
4 computer network system.

5 You shall permit routine inspection of your
6 computer system, hard drive, and other media storage
7 materials to confirm adherence to this condition.

8 This inspection shall be no more intrusive than is
9 necessary to ensure compliance with this condition.

10 You shall inform your employer or other third
11 party who may be impacted by this condition of this
12 computer-related restriction and the computer inspection
13 provision of this condition.

14 You shall submit to a search of your person,
15 residence, place of business, any storage units under your
16 control, computer, or vehicle conducted by the United
17 States Probation Office at a reasonable time and a
18 reasonable manner upon reasonable suspicion of contraband
19 or evidence of a violation of a condition of release.

20 You shall inform any other residents that the
21 premises may be subject to search pursuant to this
22 condition. Failure to submit to a search may be grounds
23 for revocation.

24 You shall be prohibited from incurring new credit
25 card charges or any credit charges, opening lines of

1 credit, or obligating yourself for any major purchases
2 without approval of the probation officer. You shall
3 provide the probation officer access to any requested
4 financial information.

5 Having been convicted of a qualifying felony, you
6 shall cooperate in the collection of DNA.

7 The court mandatory drug testing requirements of
8 the Violent Crime Control Act are imposed. You shall
9 submit to random drug testing not to exceed 104 tests per
10 year.

11 The determination of restitution is deferred.
12 Pursuant to Title 18, United States Code, Section
13 3664(d)(5), the final determination of victim losses shall
14 be set under separate order and will not exceed 90 days.
15 That will be set upon motion of the Government.

16 Based on the financial status of the defendant,
17 the Court waives imposition of a fine. It's further
18 ordered that you shall pay the United States a special
19 assessment of \$100, which is due immediately.

20 The guideline range exceeds 24 months and the
21 reason for imposing the selected sentence -- well, that
22 doesn't apply.

23 The Court departs from the guideline range for the
24 following reasons.

25 I've outlined those generally. Upon the motion of

1 either party, I will be glad to submit them more
2 articulately in writing.

3 The Court has accepted the plea agreement because
4 it's satisfied that the agreement adequately reflects the
5 seriousness of the actual offense behavior and that
6 accepting the plea agreement will not undermine the
7 statutory purposes of sentencing.

8 Under the plea agreement, the defendant has
9 entered a guilty plea to count two in return for dismissal
10 of count one. Accordingly, it's ordered that count one of
11 the indictment be dismissed.

12 The Court, having pronounced sentence, does
13 counsel for the defendant or the Government have any
14 objection to the sentence or the manner in which the Court
15 pronounced sentence?

16 MR. PEREZ: Not from the United States.

17 MR. LANGS: I guess just to make my record, Your
18 Honor, we would object just to enumerate as to a procedural
19 matter and in terms of calculating the guidelines and as a
20 substantive matter having imposed a sentence above the
21 calculated guideline range.

22 I think the other objection the Eleventh Circuit
23 generally looks for is lack of notice in terms of the Court
24 contemplating an upward variance or an upward adjustment or
25 departure in this case.

1 So we object --

2 THE COURT: What do you say about the last
3 objection, Mr. Perez?

4 MR. PEREZ: Your Honor, the last objection from
5 the defendant in terms of his argument for lack of notice,
6 I think that as far as the sentence being imposed within
7 the statutory limits the Court has asserted to do that.

8 In terms of how the Court viewed the arguments by
9 my counsel under the circumstances and after the Court
10 listened to the arguments and to the areas presented, the
11 Court then was in a position to actually make that
12 determination of going above what the advisory guideline
13 range was.

14 THE COURT: Mr. Langs, I'll give you 24 hours to
15 -- I'll recess this hearing, and I'll give you 24 hours to
16 provide me with a memo. If you want more, I'll give you
17 more.

18 MR. LANGS: It's not a law, Your Honor. The
19 Eleventh Circuit says that we, as the defense, are on
20 notice as is because of the advisory nature of the
21 guidelines that you can impose up to the maximum.

22 THE COURT: If you make that objection, I want you
23 to -- it's like a motion, and I want you to provide me with
24 authority. If you want to withdraw the motion or the
25 objection, you may.

1 MR. LANGS: I'm preserving it. I'm raising it to
2 preserve.

3 THE COURT: Okay. Then you submit whatever
4 authority you have to support that, and you have 24 hours.
5 This will be reset on Friday. Miss Darley will give you a
6 time.

7 MR. PEREZ: And the United States then will reply
8 in writing.

9 THE COURT: If you'd like or you can appear in
10 person. I don't know what authority there's going to be.

11 MR. PEREZ: I think essentially it's going to be
12 considered that because of the advisory nature of the
13 guidelines.

14 THE COURT: I think Mr. Langs is telling me one
15 thing but says he's doing another.

16 MR. LANGS: I know what the law is. I'm raising
17 it to preserve it. I'm going to lose that argument. I
18 know I am. But I have to raise it to preserve it;
19 otherwise, I'll be ineffective.

20 Because the Court has imposed a maximum sentence
21 above the calculated guideline range, we're arguing lack of
22 notice. The Eleventh Circuit has clearly said I lose that
23 point.

24 THE COURT: Eleventh Circuit says what?

25 MR. LANGS: I lose that point. You don't have to

1 give notice.

2 MR. PEREZ: Because the advisory nature of the
3 guidelines.

4 THE COURT: You give me authority.

5 MR. LANGS: It will be very short. Friday is
6 furlough Friday for me.

7 THE COURT: Okay. You can do it tomorrow then.
8 What time tomorrow?

9 MR. LANGS: I've got a hearing at 10:00 and
10 another sentencing just like this at 1:30 with Judge
11 Honeywell.

12 THE DEPUTY CLERK: 11:00.

13 MR. LANGS: I'll be with Judge Baker, I think.

14 THE COURT: At 11:00?

15 MR. LANGS: 9:00 tomorrow morning?

16 THE COURT: What time do you start? What's your
17 first hearing?

18 MR. LANGS: Change of plea. I can be here at
19 9:00.

20 THE COURT: Change of plea at what time?

21 MR. LANGS: I think it's at 11:00.

22 THE COURT: Be here at 9:30. Oh, be here at 9:15.

23 MR. LANGS: 9:15. I'll submit something this
24 afternoon. That's not a problem.

25 And the last point is, restitution, do we need to

1 defer it? I think there was a claim for \$400.

2 THE COURT: I don't think there was any -- I don't
3 think either one of you were listening. I said that I
4 would set a hearing on that based on motion by the
5 Government.

6 MR. LANGS: That's what I'm saying, there's a
7 restitution claim already.

8 MR. PEREZ: Your Honor, but that restitution
9 amount only includes expenses. It does not include
10 anything beyond gas or mileage. It needs to include and
11 address the victim's need for health counseling.

12 THE COURT: You can address that.

13 MR. PEREZ: We'll follow up with the motion on
14 that. Yes, Your Honor.

15 THE COURT: Thank you. We're in recess.

16 (Proceedings adjourned at 11:17 a.m.)

17

18 C E R T I F I C A T E

19

20 I certify that the foregoing is a correct
21 transcript from the record of proceedings in the
22 above-entitled matter.

23

24 s\Amie R. First, RPR, CRR

25

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:13-CR-53-ORL-28KRS

.
UNITED STATES OF AMERICA :
Plaintiff : Orlando, Florida
v. : August 22, 2013
SHAWN ALAN MARSHAL : 10:28 a.m.
Defendant :
.

TRANSCRIPT OF CONTINUED SENTENCING
BEFORE THE HONORABLE JOHN ANTOON, II
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Carlos Perez-Irizarry
Andrew Searle

For the Defendant: Stephen J. Langs

Court Reporter: Amie R. First, RPR, CRR
AmieFirst.CourtReporter@gmail.com

Proceedings recorded by mechanical stenography.

Transcript produced by Computer-Aided Transcription.

1 P R O C E E D I N G S

2 THE COURT: This is a continuation -- go ahead and
3 announce the case. I'm sorry.

4 THE DEPUTY CLERK: This is the case of United
5 States of America versus Shawn Alan Marshall. Case Number
6 6:13-CR-53.

7 Will counsel please state their appearances for
8 the record?

9 MR. SEARLE: Good morning, Your Honor. On behalf
10 of the United States, Andrew Searle. With me is Assistant
11 United States Attorney Carlos Perez.

12 MR. LANGS: Good morning, Your Honor. Steve Langs
13 on behalf of Mr. Marshall. He appears to my left.

14 THE COURT: Okay. Since we adjourned yesterday, I
15 have reviewed the submissions that the parties made
16 following yesterday's proceedings.

17 The Court announced then that the guidelines did
18 not adequately address 3553 factors and that was the reason
19 for a sentence outside the guideline range.

20 The presentence report provides that there is no
21 basis for a departure. There was no discussion regarding a
22 departure. And it was not the Court's intention that the
23 sentence be categorized as a departure but that it was a
24 variance.

25 Because the guidelines are advisory only, it was

1 not my belief that notice of intent to impose a sentence
2 outside the guideline range was required. I don't believe
3 counsel thought that either.

4 Defense counsel announced at the commencement of
5 the proceedings that the Court -- and this is a quote based
6 on my memory, not on looking at the transcript, but
7 something to the effect that the Court had life to play
8 with in imposing a sentence.

9 So I think that's an indication that it was
10 understood that a sentence outside the guidelines might be
11 imposed.

12 Also, just as a matter of practice in this
13 division of this large district, the Courts often impose
14 sentences that are variances below the guideline range
15 without any notice. I mean, it's -- I haven't seen
16 anything -- I haven't had a notice post-Booker and I don't
17 recall even having one pre-Booker. But I may have. I know
18 I haven't had any since.

19 Having said that, if defense counsel represents in
20 good faith that he did not believe an outside-the-range
21 sentence was a possibility because of lack of notice --
22 which as I said, I can't accept without more because it's
23 contrary to the statement that was made by counsel -- I
24 will reopen the proceeding and allow argument and evidence.

25 Mr. Langs?

1 MR. LANGS: Well, I know the rule, Your Honor. I
2 know the law at the time.

3 THE COURT: So you're just doing it to preserve?

4 MR. LANGS: Yeah. So I'm asking to change the
5 rule if we're going to give an upward departure. I would
6 like to --

7 THE COURT: Well, I just did.

8 MR. LANGS: I would like advance notice of that.

9 THE COURT: I just did.

10 MR. LANGS: But yeah.

11 THE COURT: I just did.

12 MR. LANGS: And I'd raise an objection to preserve
13 it for further appellate review.

14 THE COURT: I just gave you the opportunity to
15 make argument or present evidence.

16 MR. LANGS: In terms of reconsidering?

17 THE COURT: Well, what you're telling me
18 implicitly -- you haven't used these words. And maybe you
19 don't want to.

20 But the only reason that you would be entitled to
21 notice, I would think, would be to avoid any prejudice. So
22 if you're prejudiced, if you're making a representation to
23 me that you're somehow prejudiced by not getting notice, I
24 will accept you at your word, and I will give you an
25 opportunity to present whatever it is you would have

1 presented had you had notice.

2 MR. LANGS: May I have a moment to let that
3 digest, Your Honor?

4 THE COURT: Yes.

5 And while you're thinking about it, I'll ask the
6 court reporter to find that statement in the record that
7 you made yesterday.

8 MR. LANGS: If I may, Your Honor, I'm thinking out
9 loud as a strategic matter, is there anything I could have
10 given you that would have mitigated your calculus in that
11 sentence? Is there anything above and beyond what was
12 already presented that would have changed your mind?

13 And I guess I'm asking, is there anything I can
14 give you above and beyond the evaluations and the record
15 that was presented?

16 And in light of the -- I mean, the only thing I
17 can ask for in terms of prejudice -- and I appreciate what
18 you're asking -- you know, strategically, was there another
19 type of evaluation that could have been provided? Was
20 there another angle, a mental health angle, that I could
21 have provided in terms of mitigation?

22 Is there anything that would have -- that would
23 change your mind from a life sentence, I guess? Because
24 that would be the only strategic --

25 THE COURT: My sentence was based on what I had

1 before me at the time.

2 MR. LANGS: Yeah. And now --

3 THE COURT: You've got a neurological evaluation,
4 neuropsychological evaluation, from Dr. Olander. And that
5 was based on testing done by another Ph.D.

6 MR. LANGS: Dr. Spicer helped her. She was a part
7 of that, too.

8 It's kind of a unique question, if the Court is
9 allowing me to do a do-over.

10 THE COURT: Well, I'm saying -- I'm saying to you,
11 number one, can you in good faith tell me that you would
12 have expected notice for an upward --

13 MR. LANGS: No. I know the Court was free to give
14 a life sentence. And I'm -- I know the rule.

15 THE COURT: Number two, if I had given you notice,
16 even though you weren't entitled to it, just as a matter of
17 courtesy or an abundance of fairness -- I don't know,
18 however you want to call it -- what would -- is there
19 anything that you would have done?

20 Is there anything that you left in your office
21 that you wanted to bring to my attention?

22 MR. LANGS: I don't know. I don't know. Because
23 had there been notice, maybe I would have done something
24 differently. I don't know.

25 THE COURT: Well, think about it. I'm not going

1 to open it up for you to re-investigate. But if you can
2 think of something that you forgot to bring up or you
3 didn't think was important but now you do --

4 MR. LANGS: Do you think there was something
5 missing for your consideration? I think that what we gave
6 you was a solid presentation.

7 THE COURT: Okay. I'll accept that. Okay.

8 MR. LANGS: I guess the only thing I would ask is,
9 if the Court would, it indicated, requested by the parties,
10 you might be inclined to do a sentencing memorandum.
11 Because of the severity of the sentence, I would ask for
12 that, if at all possible.

13 In all likelihood, we'll probably appeal the
14 sentence, and I want to make sure we give the Eleventh
15 Circuit a sufficient record to review, if the Court is
16 willing to do that for us.

17 THE COURT: Yeah. I will work on that, and it
18 will be more complete than what I have given you and what I
19 will do now.

20 But I will say that I always have the statute in
21 front of me when I evaluate a presentence report and
22 information that I get at pre -- at sentencing in trying to
23 determine a sentence that is reasonable.

24 As you know, certain factors inform the Court is
25 to -- what is required to meet the goals of sentencing.

1 And the first and one of the most important is the nature
2 and circumstance of the offense, circumstances of the
3 offense. And the facts relevant to sentencing are
4 contained in the presentence report.

5 The parties haven't objected to the -- those
6 facts, and the Court has adopted them as its findings of
7 fact.

8 As detailed in paragraphs eight through seventeen
9 of the presentence report, the defendant repeatedly raped
10 his daughter beginning when she was 14 years old until the
11 conduct was discovered when she was 17 years old. This
12 conduct occurred in the States of Hawaii and Florida.

13 The child complied with the sexual demands of her
14 father out of fear that he would inflict physical injury
15 upon her if she refused. This fear was based in part on
16 his threats and in part on his violent behavior -- his
17 explicit threats and in part on his violent behavior in the
18 home.

19 Specifically, defendant told the victim that if
20 she reported the conduct, he would be responsible for --
21 she would be responsible for destroying the family.

22 Sexual abuse delivered by the defendant included
23 vaginal and oral penetration. On occasions, the acts were
24 aggressive and forceful. On at least one occasion,
25 defendant pinned the victim's hands behind her back while

1 vaginally penetrating her. And on another occasion, he
2 wrapped a cord around her neck while administering the
3 abuse.

4 The acts would occur in the family home and in
5 motels when the family was traveling in connection with
6 defendant's military service.

7 The abuse would occur when the mother was working
8 or when the defendant sent her on errands. Other times,
9 the defendant would commit the abuse behind closed doors
10 with other family members, including the victim's two
11 younger sisters, in the house.

12 Defense counsel described the case as being among
13 the most egregious in federal court. That description
14 fits.

15 The conduct of this defendant was unusually cruel.
16 Unlike so many crimes prosecuted in this court, there is a
17 direct victim. The victim is a child who is entitled to
18 the protection of a father. Defendant was a father only in
19 a biological sense. He betrayed the trust he owed and
20 deprived the victim of a normal childhood.

21 The Government presented a letter from the
22 victim's mother that described the devastation caused by
23 defendant's conduct, but it understates the damage that the
24 defendant has inflicted on the victim.

25 The nature and circumstances of this case weigh

1 heavily against -- this offense weigh heavily against the
2 defendant.

3 We don't know the number of times that he raped
4 the child, but it was over a long period of time. And I
5 don't think that is accounted for in the guidelines. It
6 wasn't an incident. It wasn't a couple of incidents.

7 I know there's an enhancement in the guideline
8 calculation, but I don't think it adequately addresses the
9 conduct that occurred between the child's 14th and
10 17th year.

11 History and characteristics of the defendant is
12 another factor that I put a lot of -- I gave a lot of
13 thought to. In assessing the characteristics of the
14 defendant, the Court has relied on the presentence report,
15 the reports of Jacquelyn Olander, Ph.D., and Dr. -- I don't
16 remember her first name -- Susan Spicer, Ph.D., statements
17 of counsel, and the defendant's statements at sentencing.

18 Defendant has no history of mental illness and
19 scores high average or above average on intelligence tests.
20 He has average memory.

21 He's one of seven children. At least five of
22 defendant's siblings are doing well. One is a housewife;
23 one is an attorney and state representative; one an
24 accountant and pastor; one a government contractor; and one
25 a banker. Defendant does not know the occupation of one

1 brother.

2 The psychological reports are unremarkable. He's
3 not been diagnosed with having any known mental illness.
4 He has a history of alcohol abuse.

5 Defendant has served as a technician in the United
6 States Air Force and attained the rank of E-7. He has
7 twice been awarded the Air Force Commendation Medal and the
8 Kuwait Liberation Medal.

9 All agree that the defendant has shown regret for
10 his actions. Apart from the facts in this case,
11 defendant's history and characteristics do not weigh
12 heavily one way or the other.

13 The Court has considered the kinds of sentences
14 available, and the only sentence available is a lengthy
15 term of incarceration.

16 The Court has considered the need to avoid
17 unwarranted sentence disparity. I think I commented on
18 that yesterday.

19 This is such an unusual case that I have nothing
20 really to compare it with personally. To the extent that
21 disparity is measured by the guideline range, I've
22 explained why I think this case is so egregious that the
23 sentence should fall outside the guidelines.

24 I don't know what we're going to do with
25 restitution, but it's not a factor that weighs heavily,

1 really weighs. It has no weight with regard to the
2 sentence that I have imposed.

3 I think this sentence is necessary to reflect the
4 seriousness of the offense. I think anything less would
5 not do that. I think it's necessary to promote respect for
6 the law and to provide just punishment for the egregious
7 crimes of the defendant.

8 I think it's necessary to afford adequate
9 deterrence to criminal conduct by this defendant,
10 specifically and generally.

11 Could I get the file?

12 Counsel, while we're waiting, I apologize for the
13 scheduling problem this morning. This case seems to invite
14 problems. For whatever reason, the marshal's office did
15 not get him here on time. They informed me, and I hope you
16 were informed immediately after I was.

17 MR. PEREZ: Yes, Your Honor. That was the case.
18 And those things happen in terms of transportation from the
19 different facilities.

20 THE COURT: Defendant is hereby remanded to the
21 custody of the United States Marshal to await designation
22 by the Bureau of Prisons.

23 To the extent permitted by your plea agreement,
24 you have the right to appeal from this sentence within
25 14 days from this date. Failure to appeal within the

1 14-day period shall be a waiver of your right to appeal.

2 The Government may file an appeal from this
3 sentence.

4 You're also advised that you're entitled to
5 assistance of counsel in taking an appeal. And if you're
6 unable to afford a lawyer, one will be provided for you.
7 If you are unable to afford a filing fee, the clerk of
8 court will be directed to accept notice of appeal without
9 such fee.

10 Do you understand everything that's happened, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The Court is in recess until 1:30.

13 (Proceedings adjourned at 10:48)

14

15 C E R T I F I C A T E

16

17 I certify that the foregoing is a correct
18 transcript from the record of proceedings in the
19 above-entitled matter.

20

21 s\Amie R. First, RPR, CRR

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Docket 13-14095-D

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

SHAWN MARSHALL,

Appellant.

CERTIFICATE OF SERVICE

MARK DIAMOND, an attorney admitted before the U.S. Court of Appeals for the Eleventh Circuit, certifies that on April 30, 2014, I filed two copies of the Appellant's Appendix with Clerk, U.S. Court of Appeals, 56 Forsyth Street, NW, Atlanta, GA 30303, and served a copy on Andrew Searle, U.S. Attorney's Office, 400 West Washington Street, Suite 300, Orlando, FL 32805, and Shawn Marshall, 58253-018, USP Tucson, 9300 South Wilmot Road, Tucson, AZ 85756, by first-class mail through the U.S. Post Office, and electronically with the Court

/s/ Mark Diamond
Attorney for Appellant